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DAC #76-47 15 DECEMBER 1983

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

7-2004.10 Solicitation Definitions. Insert the following provision in all solicitations for simplified contracts.

SOLICITATION DEFINITIONS (1983 DEC)

- (a) The term "solicitation" means Invitation for Bids (IFB) where the procurement is advertised, and Request for Proposal (RFP) where the procurement is negotiated.
- (b) The term "offer" means bid where the procurement is advertised and proposal where the procurement is negotiated.
- (c) For purposes of this solicitation, the term "advertised" includes small business restricted advertising and other types of restricted advertising.

(End of provision)

7-2004.10

ARMED SERVICES PROCUREMENT REGULATION

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CONTRACT CLAUSES AND SOLICITATION PROVISIONS

(h) Any financial data submitted with any offer hereunder or any representation concerning facilities or financing will not form a part of any resulting contract; provided, however, that if the resulting contract contains a clause providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished hereunder is incomplete, inaccurate, or not current.

(End of provision)

7-2004.8 Labor Information. Insert the following provision in all solicitations for simplified contracts.

LABOR INFORMATION (1983 DEC)

General information regarding the requirements of the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45) and the Contract Work Hours Standards Act (40 U.S.C. 327-330) may be obtained from the Department of Labor, Washington, D.C. 20210, or from any regional office of that agency. Request for information should include the solicitation number, the name and address of the issuing agency, and a description of the supplies or services.

(End of provision)

7-2004.9 Parent Company. Insert the following provision in all solicitations for simplified contracts.

PARENT COMPANY (1983 DEC)

A parent company for the purpose of this offer is a company which either owns or controls the activities and basic business policies of the offeror. To own another company means the parent company must own at least a majority (more than fifty percent (50%)) of the voting rights in that company. To control another company, such ownership is not required; if another company is able to formulate, determine, or veto basic business policy decisions of the offeror. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, contractual arrangements, or otherwise.

(End of provision)

7-2004.9

ARMED SERVICES PROCUREMENT REGULATION

Federal Register

Friday
February 17, 1984

Part VI

Department of Labor

Occupational Safety and Health
Administration

29 CFR Part 1926

Crane or Derrick Suspended Personnel
Platforms; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S-409]

Crane or Derrick Suspended Personnel Platforms

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: OSHA proposes to revise section 1926.550, Cranes and Derricks, of OSHA's construction industry standards, by adding a new paragraph (g). None of the other paragraphs of § 1926.550 will be affected by this rulemaking.

The use of a friction of hydraulic portal, tower, crawler, locomotive, truck, and wheel mounted crane or derrick to hoist employees on a platform is occasionally necessary due to worksite conditions. However, several accidents have occurred as a result of this practice, the most recent of which resulted in four fatalities at Tampa Stadium, Tampa, Florida, March 31, 1983. While OSHA's construction standards do cover the use of elevators, personnel hoists, and aerial lifts to hoist employees, they do not currently provide guidance concerning safe work practices while hoisting personnel platforms with cranes or derricks. This proposed regulatory action would remedy that lack of coverage by providing criteria for the allowance of such a practice as well as design, operational, inspection and testing requirements.

DATES: Written comments and any requests for a hearing must be postmarked on or before April 17, 1984.

ADDRESS: Written comments and any request for a hearing should be submitted to the Docket Officer, Docket No. S-409, Occupational Safety and Health Administration, Room S-6212, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, D.C. 20210, (202) 523-7894.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Room N3637, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: The author of this Proposed Rulemaking is Steve Jones of the Office of Construction and Civil Engineering Safety Standards, Occupational Safety and Health Administration.

I. Background

Congress amended the Contract Work Hours Standards Act (CWHSA) (40 U.S.C. 327 et seq.) in 1969 by adding a new Section 107 (40 U.S.C. 333) to provide employees in the construction industry with a safer work environment and to reduce the frequency and severity of construction accidents and injuries. The amendment, commonly known as the Construction Safety Act (CSA) (Pub. L. 91-54; August 9, 1969), significantly strengthened employee protection by providing for occupational safety and health standards for employees of the building trades and construction industry in Federal and federally financed or federally assisted construction projects.

The Occupational Safety and Health Act (the Act) (84 Stat. 1590; 29 U.S.C. 655 et seq.), which expanded coverage to virtually all employments and was enacted less than two years later, authorized the Secretary of Labor to adopt established Federal standards issued under other statutes, including the Construction Safety Act, as occupational safety and health standards under the Act. Accordingly, the Secretary adopted the construction standards, which were issued under the Construction Safety Act, as OSHA standards on May 29, 1971 (36 FR 10466), and redesignated these rules as 29 CFR Part 1926 on December 30, 1971 (36 FR 25232). The standard entitled "Cranes and Derricks," § 1926.550, was adopted as an OSHA standard in Subpart N of Part 1926 as part of this process.

A particular provision within that Cranes and Derricks section that was adopted as an OSHA standard in 1971 is related to the hoisting of employees by crawler, locomotive and truck cranes. Paragraph 550(b)(2) requires that the operation of all such cranes meet the applicable requirements in the ANSI standard B30.5 "Safety Code for Crawler, Locomotive and Truck Cranes." ANSI standard B30.5 Section 5-3.2.3(e), requires that "the operator shall not hoist, lower, swing, or travel while anyone is on the load or hook."

A similar requirement is contained in ANSI standard B30.6. "Safety Code for Derricks." Section 6-3.3.3 requires that "the operator shall not hoist, lower, or swing while anyone is on the load or hook."

There has been some confusion in the construction industry about whether OSHA interprets these ANSI provisions to prohibit the hoisting of personnel platforms, sometimes known as man baskets or man-skip boxes, by crawler, locomotive, and truck cranes and derricks. OSHA's policy in this matter

can best be understood by examining the chronology of events related to this matter.

In 1972, a group of contractors in Florida requested a clarification of § 1926.550(b)(2). OSHA interpreted § 1926.550(b)(2) to mean that where no other practical alternative means of transporting employees existed, no citations would be issued, provided that specific requirements were met (Ex. 1).

In 1973 OSHA received an ANSI B30 Committee interpretation of ANSI B30.5, Section 5-3.2.3(e). ANSI interpreted the section to refer to normal loads such as beams, girders or concrete buckets. They further stated that under controlled conditions, a specially designed scale box or other guarded platform for personnel that was attached to the crane hook was permissible (Ex. 2).

Again in 1973 OSHA responded to a request for a variance from the Boeing Corporation concerning the application of paragraph .550(b)(2). OSHA determined that a variance was unnecessary because a specifically designed safety work platform suspended from the hook was not covered by the term "load." OSHA further stated that riding and working on these platforms while using a lifeline-lifeline system was not the same as riding a material load, or hanging, standing or sitting on the hook which is prohibited by both the ANSI standard and OSHA's standard (Ex. 3, p. 2).

The Advisory Committee on Construction Safety and Health (ACCSH) appointed a subgroup from among the Committee members in December 1973 to examine this issue, to evaluate the need for standards, and to make recommendations to the full Committee.

A two-day meeting of the subgroup, at which interested parties were invited to participate, was held July 30 and 31, 1974 (Ex. 4). After review of all the oral and written comments received, along with data developed by the subgroup, recommendations for a draft proposal were prepared for consideration by the full Committee. The Advisory Committee acted favorably upon these recommendations at a meeting held in October 1974 (Ex. 5).

Following the Advisory Committee meetings, OSHA prepared a draft Proposed Rule to cover the practice of hoisting personnel, but no action was undertaken to publish the document in the *Federal Register*. Instead, since 1975, OSHA has issued four interpretations which provided guidelines for the use of crane suspended work platforms (Ex. 6, 7, 8 and 9). These guidelines were

incorporated into OSHA Instruction STD 1-11.2A, dated October 8, 1981 (Ex. 10). That instruction has recently been revised (OSHA Instruction STD 1-11.2B, dated August 8, 1983) to serve as guidance until this rulemaking is completed (Ex. 11).

OSHA has determined that these administrative interpretations have been less successful than desired in accomplishing the objectives of the OSH Act. Therefore, this rulemaking action has been initiated to clarify and codify those conditions under which employees may be hoisted by cranes or derricks in a personnel platform.

Since that decision was made, a new draft proposal was accordingly developed which incorporated the latest policy on this subject in OSHA standards development, as well as recent ANSI draft guidelines (Ex. 14 and 15). (Subsequent to the completion of this document, a revised ANSI/ASME B30.5 standard was issued on October 31, 1983.) That draft OSHA proposal was discussed by ACCSH May 23 and 24, 1983 (Ex. 12). The recommendations of ACCSH have been incorporated where possible, into this proposed rule. In addition to the ACCSH review, OSHA has widely distributed drafts of this proposal to interested parties. Those comments have been very informative and OSHA appreciates the various parties' efforts (Ex. 19). Further comments are now solicited, especially on the issues highlighted in this proposal.

II. Hazards

OSHA estimates that there would be 42 injuries resulting from the use of cranes or derricks to hoist personnel in a typical year, 10 of which would be fatal (Ex. 21, p. IV-2).

Although the worker population exposed to the hazards of this practice is small relative to other worker populations covered by OSHA standards, the severity of an accident is usually great. A review of several accidents best illustrates the severity of this problem.

One accident in Cheyenne, Wyoming (1973), resulted in two deaths when a telescopic boom severed the load line. Had the employees in the platform been secured by a safety belt and lanyard attached to a lifeline secured to the boom tip, or if the crane had been equipped with a device or feature to prevent two-blocking from severing the load line, the deaths may have been averted. The operator was experienced in operating cranes, but not with the specific machine involved, nor with the type of operation in which the accident occurred. Even employees well

acquainted with telescopic boom operations have had problems when working with this equipment in new locations and in unfamiliar surroundings.

In another fatal accident in Kansas City (1972), a structural framework with five men and a significant amount of material and equipment within it fell to the ground when the crane tipped over. The total weight was reported to be only half the rated capacity of the crane when boomed out to the work location, but the crane started tipping before it reached the desired radius. Failures of this nature point out the need for exact knowledge of a crane or derrick's stability, and the need for an accurate determination of the weight of the load, especially prior to its use for hoisting employees.

In Chicago (1981), five employees were killed and a sixth employee was seriously injured when a job-built personnel basket fell 100 feet. The employees were being hoisted by a mobile crane to a work station atop a tower crane being assembled on the site. The metal framework at the top of the cage, to which the hoisting rope was attached, snapped, causing the platform and its occupants to fall. Specific design criteria and inspection and testing requirements should prevent accidents caused by structural failure.

Most recently, in March 1983, four men were killed in an accident at Tampa Stadium in Tampa, Florida. Four men in a personnel platform were being raised by a crane to a work station 135 feet above the ground at the top of the stadium. When the platform reached 130 feet, the boom of the crane fell carrying the men in the platform with it.

The available evidence therefore suggests that there is a significant risk involved in the use of crane or derrick suspended personnel platforms if proper precautions are not followed. OSHA solicits further information on the nature and the extent of this risk.

III. Summary and Explanation of the Proposed Standard

This Notice of Proposed Rulemaking is intended to solicit information relevant to the hazards of this operation and to proposed paragraph (g) of § 1926.550. Comments on the proposed standards, suggestions and recommendations with explanations, and supporting evidence are particularly solicited. OSHA intends to evaluate the comments, recommendations, suggestions and evidence received in response to this Notice and, on the basis of this record and other information available to the Agency, make appropriate modifications.

In order to facilitate public comment, this Notice not only includes the text and explanation of the proposal, but also identifies several issues to which OSHA directs the public's attention for special consideration. OSHA wants to focus attention on these issues that have been raised during the preparation of this proposal in order to encourage the submission of additional valuable information from interested persons.

(A) Issues

1. OSHA's scope and application statement contained in paragraph .550(g)(1) contains several important points on which the Agency solicits comments.

- It is recognized throughout the construction industry that hoisting employees with cranes or derricks should not be allowed as a routine operation. The theme appears again and again that this practice must be limited (Ex. 13-16). This same point has been stressed repeatedly by members of the Advisory Committee on Construction Safety and Health (ACCSH) (Ex. 4, pp. 16-90; Ex. 5, pp. 103-292; Ex. 12, pp. 56-97 and 282-288). It has been and remains OSHA's position that this hoisting practice shall not be used as a way to provide routine access to a working location for reasons of convenience alone.

OSHA considered describing in detail the situations in which this practice would be warranted, but such descriptions would have to list all the complex factors involved in reaching that conclusion. Each situation requiring the hoisting of employees will be unique and must be considered on its own merits. OSHA cannot anticipate every set of circumstances in which this practice would be considered appropriate.

Therefore, OSHA has drafted the scope of this proposed standard in performance language designed to allow the hoisting of employees under a variety of conditions that would meet the criteria.

OSHA considers the scope statement and its limitation on employee hoisting by cranes and derricks to be very important. Therefore, the Agency solicits comment on the effectiveness and clarity of the scope and application statement. Specific suggestions for rewording the statement are encouraged.

- Another issue involves the possibility of future rulemaking actions regarding this practice in general industry and shipyard employments. OSHA recognizes that such operations also occur in general industry and

shipyards as well, and that protection for employees in those industry sectors should be provided also. Thus far, OSHA has concentrated its efforts on the construction industry. However, if comments support coverage of those industries, the Agency may begin development of proposed rules as appropriate.

OSHA solicits comments from those affected industry and employee groups as well as equipment manufacturers on the coverage of general industry and shipyards with a similar standard (Marine Terminals already have rules on this issue). Do the cranes and derricks used or the types of operations performed in all these industries vary sufficiently from those in construction to warrant standards much different from this proposal? Commenters are urged to indicate whether there are reasons not to apply provisions such as those contained in this proposal to the listed types of cranes and derricks used in general industry and shipyards.

2. The second issue of which OSHA particularly solicits comments involves crane and derrick operational criteria. OSHA proposes to require that the load line hoist drum have controlled load lowering. OSHA's intent is to establish effective operator control of the personnel platform under all circumstances. This would remove the potential for a free fall of the personnel platform, protecting the occupants from the hazards of a free fall. If the hoisting equipment has been equipped with the free-fall feature, the free-fall option must not be used while hoisting employees. This protection against the hazards of a free fall would be provided by a system or device on the power train, other than the brake, which can regulate the rate of speed of the hoist mechanism.

OSHA had previously considered prohibiting the use of systems, such as torque converters, that require an increase of the engine or motor speed to reduce the lowering speed of the loadline. The intent of such a prohibition was to eliminate the possibility of equipment which allowed a free fall. However, the Agency has received many comments that there are hoisting mechanisms using torque converters that will provide adequate protection to employees being hoisted in personnel platforms (Ex. 4, pp. 55-60; Ex. 5, pp. 104-130; Ex. 12, pp. 66-288).

Therefore, OSHA is proposing to provide protection to hoisted employees by requiring controlled load lowering. The Agency believes that this rule will provide the intended protection, while allowing the use of any hoist mechanism that could provide that control. OSHA's intent is to prohibit the use of any

equipment that could not maintain control over the speed of the drum rotation under all circumstances.

OSHA has followed the example set by ANSI in its draft standards on this topic (Ex. 13, 14 and 15). However, OSHA solicits information on this issue. Specifically, what types of systems exist that maintain this power control of the hoist drum? Are there systems which usually have power control that occasionally lose the control, thus allowing the wire rope to free spool off the hoist drum? If so, what are the causes of this loss of control and how can they be prevented? OSHA encourages the submission of any data on accidents related to this topic.

OSHA's preliminary regulatory impact assessment disclosed that the requirement for controlled load lowering may not be technologically feasible for many older machines that are not so equipped (Ex. 21, p. V-1). Even if this provision was technologically feasible, OSHA's report indicates that such a conversion may not be economically feasible. However, feasibility problems should be confined to a relatively small number of older cranes. OSHA seeks comment on the impact of this proposed rule on older cranes not equipped with controlled load lowering. Is that population of cranes large enough so that the impact of this rule creates a severe hardship for the construction industry? If so, what alternative protections are available for the hazard of a free fall?

3. Another topic which has been discussed is whether OSHA should limit the number of occupants on the personnel platform (Ex. 4, pp. 61-79, 172-178; Ex. 5, pp. 186-187).

One view is that if OSHA does not limit the number of occupants, the Agency would be encouraging the use of platforms to replace personnel hoists or scaffolding. ACCSH received comments from the public on the size of the personnel platform, ranging from two men up to an unlimited number. After looking at the work procedures that would be done from this type of suspended platform, the ACCSH recommended a limit of six employees on a platform (Ex. 4, p. 172; Ex. 5, pp. 186-189). However, several commenters at the Advisory Committee meetings expressed the opinion that the platform should be designed for the number of employees needed for the job, and that the platform's rated capacity should not be exceeded.

The most recent draft of ANSI A10.28, "Crane or Derrick Suspended Work Platforms," does not limit the number of occupants. OSHA does not have the data to support any particular number

for a limitation of occupancy of the personnel platforms. The Agency believes that as long as the platform's rated capacity assigned by the engineer who designed the platform is not exceeded, any limitation on the number of occupants is unnecessary. Given that this standard will apply to many different operations and work situations in construction, OSHA believes that such an approach will allow flexibility to meet all those situations, while providing protection to the employees.

OSHA solicits comment on the appropriateness of this approach and welcomes data to support any other approaches that may be recommended. OSHA solicits comment on whether any allowable operation would require more than six occupants.

4. A subject of much discussion has been the safety factors for the wire ropes, the personnel platform and the associated rigging. In previous drafts of this proposed standard, OSHA had proposed a safety factor of 10 for the loadline, rigging, and personnel platform. OSHA believes that safety factors for hoisting employees should be higher than those specified for handling material. OSHA currently requires 3.5 for running ropes, three for standing ropes (by § 1926.550(b)(2) which incorporates ANSI B30.5-1968) and a safety factor of five for wire rope slings and bridles used for material handling rigging equipment (§ 1926.251(c)(1)). OSHA currently has no standard on the safety factor for a personnel platform.

A safety factor of eight for the wire rope was recommended by ACCSH (Ex. 5, p. 199; Ex. 12, pp. 135-136). The most recent draft of ANSI B30.5-3.2.2.3(a)(5) requires minimum load hoist and boom hoist wire rope safety factors for the combined weight of the lift attachments, platform, personnel and tools to be 5:1 for manufacturer's specified construction wire rope, and 8:1 for rotation-resistant wire rope.

The "Rigging Manual," published by the Construction Safety Association of Ontario, Canada, states that nonrotating ropes warrant special consideration, handling and care since they are much more easily damaged in service than any other type of rope. They recommend a material handling factor of safety of approximately eight or 10 for optimum nonrotating characteristics. More recent ANSI standards (B30.6-1977 and the draft revision of B30.5) also specify a higher safety factor of five for rotation-resistant wire rope for material handling purposes.

The "Rigging Manual" also specifies a minimum acceptable safety factor of 10 for standing and running ropes used on

equipment that is intended to carry employees.

OSHA is proposing to require a derating of the crane or derrick's capacity as listed on the load rating chart, by 50 percent when handling employees (§ 1926.550(g)(3)(i)(F)). This will in effect double the existing safety factors on the wire ropes, which will result in a safety factor of seven on the loadline, without even further specifying any additional safety factor. OSHA has proposed a safety factor of seven for the load line in order to be consistent with this derating, i.e., the 3.5 safety factor would automatically be doubled (paragraph .550(g)(3)(i)(B)). Requiring a safety factor other than seven would conflict with the 50% derating provision. OSHA solicits comments on whether this derating of the load rating chart is sufficient to cover the safety factor for standing and running ropes, or if the safety factor should be specifically listed. OSHA further solicits comments on the adequacy of the safety factor of seven for rotation resistant wire rope. Current OSHA standards do not list a specific safety factor for such wire rope, so the 50-percent derating of the load rating chart would have no impact on rotation resistant wire rope safety factors.

The ACCSH Subcommittee on Crane Suspended Work Platforms recommended a safety factor of 10 for the platform (Ex. 4, pp. 173-182). However, ACCSH recommended a safety factor of six for the platform (Ex. 5, p. 199). The ANSI A10.28 draft proposes a safety factor of five for the platform. OSHA is proposing a safety factor of five for the platform in paragraph .550(g)(4)(i)(C). OSHA solicits comments on the sufficiency of such a safety factor for the platform. Will this safety factor be sufficient if the personnel platform strikes and hangs up on a projection while being hoisted, before the operator reacts to clear the projection? If different safety factors are recommended, the reasons for the recommendation should be provided.

5. In an earlier draft of this proposed standard, OSHA included several additional instruments or equipment components. However, comments were received that such devices were either not feasible or unnecessary. Therefore, OSHA has not included these devices in this proposal. OSHA is soliciting comments on these devices and their contribution to the safety of employees engaged in these operations.

4. OSHA had considered a requirement for a load line position indicator with an accuracy of plus or minus one percent to be in view of the operator. The purpose was constantly to

inform the operator of the height of the personnel platform by indicating the amount of load line paid out. As an alternative, the proposal would require employees being hoisted to remain in continuous sight and communication with the operator or signal person. Comments are solicited on the necessity of this device if the employees being hoisted remain in continuous sight and communication with the operator or a signal person.

B. OSHA had also considered a requirement for a line speed indicator to be in view of the operator. OSHA had thought that since the Agency was proposing to limit the speed of the personnel platform to 100 feet per minute, the operator would need a speed indicating device to ensure compliance. However, ACCSH comments indicated that such a device was neither feasible or necessary (Ex. 5, p. 239) [See discussion of paragraph (3)(i)(A) later in the preamble].

OSHA solicits comments on the feasibility and desirability of such devices. Are there other devices which should be required when hoisting employees?

C. Paragraph (3)(ii)(C) requires a means to prevent accidents caused by running the load block or headache ball into the boom tip sheaves (two-blocking). Such an occurrence can break the load line causing the personnel platform to fall, or the boom to be pulled over backwards. OSHA believes that the most effective means of controlling this hazard is for the operator to maintain sight of the load block in relation to the boom tip. However, such constant attention is not ensured due to a wide variety of reasons. Therefore, OSHA is proposing to require either an anti-two-blocking device, which deactivates the hoist drum when contact is made with an upper limit switch, or a two-block damage prevention feature which deactivates the hoist drum before the load line is separated when two-blocking occurs—such as those built into the control circuit of some hydraulic cranes. Other anti-two-blocking devices or damage prevention features may exist and would be allowed by the standard, as long as they are as effective in controlling this hazard. OSHA recognizes the hazards of two-blocking and believes the employer must take the most appropriate measures to ensure that employees are protected from such hazards.

The Agency solicits comments on the effectiveness of anti-two-blocking devices. If problems exist, are they the result of improper use and maintenance or are such devices inherently unreliable? For example, these devices

are sensitive switching mechanisms that are designed to act as back-up safety devices and are not designed to function as an operational control. The device may be used in this fashion by not stopping the rising load block before it strikes the boom tip, thus relying upon the device to stop the hoist drum. Continued use in this mode is beyond the designed capacity of the device and may lead to premature failure. OSHA believes that if the devices are properly used, inspected, tested and maintained, then reliability could be ensured when their functioning is critical to the safety of employees on the platform.

ANSI drafts recognize warning systems as alternatives to positive action devices. OSHA solicits comments on the effectiveness of warning devices in preventing two-blocking accidents.

- OSHA solicits responses to several specific questions on this issue.

- Have anti-two-blocking devices actually been proven to be ineffective as currently used? If so, what are the specific problems involved?

- Will the trial lift, as proposed by paragraph (g)(5)(ii), be sufficient to ensure that this safety device is properly functioning?

- Should OSHA regulate the proper use of these devices as does ANSI B30.2-3.2.4 (Ex. 18)? Such a provision would prohibit the use of anti-two-block devices as an operational control.

- OSHA's preliminary regulatory impact assessment disclosed that the requirement for anti-two-block protection would entail making major modifications at considerable expense for mechanically operated, frictionclutch type cranes and would probably not be economically feasible for some of these older cranes (Ex. 21, p. V-1). The assessment also indicated that hydraulic cranes can more readily incorporate this safety feature. However, the assessment states that most construction firms and crane rental agencies are likely to retrofit only a small portion of their cranes in view of the infrequency with which the operations covered by this proposed standard are performed. As a result, less adaptable cranes will not likely have to be retrofitted, thereby minimizing any potential feasibility problems. OSHA seeks comments on the economic impact of proposed paragraph (3)(ii)(c). OSHA also seeks comment on the hazards of two blocking when hoisting personnel and seeks suggested alternative protections against such hazards.

6. Employees on the platform may be exposed to the hazard of falling objects. OSHA is proposing in paragraph (g)(4)(ii)(D) to require overhead

protection when employees are exposed to falling objects. During the ACCSH meeting, it was noted that the fall ball may drop into the platform when the platform is landed, if the operator does not immediately stop lowering the loadline. However, it was also pointed out that the nature of the work may not allow overhead protection because some operations require work to be performed almost directly overhead. OSHA solicits comments on whether overhead protection should be required at all times except when the nature of the work would not allow it. If so, what are the work activities that could not be performed if overhead protection were present?

7. OSHA had considered requirements for an automatic brake that stops the load when the operator releases the controls, and a second means of stopping and holding the load. The majority of comments that OSHA has received—comments from engineers and technical representatives of crane manufacturers—state that such requirements are neither feasible nor desirable. Furthermore, neither of the ANSI drafts contain such requirements.

OSHA specifically solicits comments on the feasibility and desirability of requiring automatic brakes. The Agency requests information on accidents involving brakes, especially those which automatic brakes would have prevented, or those in which a secondary stopping means would have prevented an accident when the primary brakes failed.

8. OSHA had also considered a provision which would have required a shackle in lower load blocks and headache balls, when used to hoist employees.

OSHA's objective is to prevent accidental disengagement to the platform from the load block. The personnel platform may be jostled, strike an object, or the hook may be inclined, if two-blocked, to an angle where the ring or shackle comes through the throat of the hook. During such events, some hook types may allow disengagement, causing the platform to fall.

The draft ANSI standard 5-3.2.2.2 was the source of OSHA's proposed standard (Ex. 13, p. 2). After analysis of this issue, the Agency decided to propose to allow a hook. However, OSHA is soliciting comment on what types of hooks can be positively closed and locked to prevent accidental disengagement of the platform. Are such hooks capable of supporting the load in a two-blocking situation when the hook is inclined? OSHA solicits data on various hooks which would provide the

positive engagement under all circumstances. Data is also requested on the effectiveness of mousing the hook, as is common practice in the maritime industries.

9. OSHA is prohibiting cranes from traveling while employees are suspended, except for portal and tower cranes operating on a fixed track, which have been allowed to travel because operating on a fixed track eliminates the hazards of traveling over uneven or soft ground.

OSHA has received comment that there are circumstances which would require a truck or crawler crane to travel with employees suspended on the platform. OSHA's proposal does not allow such a practice, but solicits comment on this issue, particularly on the following questions.

- What are the operations that would require the crane to travel with employees suspended?

- Why has the use of cranes to hoist employees been selected over other means of access?

- Under what conditions is the traveling of cranes conducted to ensure the safety of suspended employees?

- Should OSHA limit the distance over which cranes can travel? If so, what should the limit be?

- Should an allowance be made for minor positioning as opposed to traveling? How should minor positioning be defined and what precautions must be taken?

- Should OSHA specify exact conditions under which traveling would be allowed? If so, what are they, and why?

10. OSHA solicits comment on whether an additional sling should be used to attach the platform to the load line. This sling would attach to the ring or shackle at the top of the platform rigging or to the platform and would secure to the load line above the hook at the load block or headache ball. This secondary means of attachment would serve to maintain connection of the personnel platform to the load line if the primary point of connection fails for any reason.

This safety bridle is somewhat related to the requirement for overhead protection and the tie-off point for the body belt lanyard. For example, if employees are hoisted on a platform with overhead protection, the most likely location to attach the body belt lanyard is within the platform. Should employees tie off above the hook, and the personnel platform accidentally disengages from the hook, the employees would be struck by the overhead protection on the platform as it dropped past them. However, if

employees tie off within the platform, they will remain on the platform if it drops. Both situations are to be avoided.

- Should OSHA require a secondary means of attachment (safety bridle) under all circumstances, or only when overhead protection is provided?

- What data exists on the frequency of the platform being accidentally released from its primary means of attachment to the load line?

- If required, what exactly should this safety bridle consist of, and how should it be attached?

(B) Summary of the Proposed Standard.

Section 1926.550(g). This proposal would add a new paragraph (g) to § 1926.550 entitled "Crane or Derrick Suspended Personnel Platforms."

Paragraph (g)(1) Scope and application. Proposed paragraph (g)(1) states the scope and application of this standard. This standard applies to friction or hydraulic portal, tower, crawler, locomotive, truck, and wheel mounted cranes or derricks. OSHA believes that these machines are similar enough to include in the same rulemaking. However, comment is solicited on the impact of including these various types of cranes in this rulemaking.

This standard will apply only to personnel hoisting operations where a personnel platform is attached to the load line of the aforementioned equipment.

Paragraph (g)(2) General requirement. This requirement will permit employers to hoist employees in such a manner only under the specified circumstances. An employer will have to analyze carefully each situation before a decision is made to hoist employees by a crane or derrick (See (A) Issue (1)).

Paragraph (g)(3) Crane and derrick. This paragraph contains the general provisions that all cranes and derricks covered by this proposal must comply with when hoisting employees.

Paragraph 3(i)(A) would limit lifting and lowering speeds to 100 feet (30.48 m) per minute. The 1974 ACCSH said there ought to be some criterion of speed, and 100 feet per minute was the consensus of the committee. The 1983 ACCSH did not modify that opinion. Furthermore, one crane manufacturer's manual for wire rope suspended personnel platform use specifies a limit of 100 feet per minute (Ex. 17, p. 7-2).

In an issue related to the hoisting speed, the National Constructors Association raised a question of how the operator will know that he is not exceeding 100 feet per minute unless line speed indicators are provided (See

(A) Issue (5)). The ACCSH discussed this question but did not think it was feasible to put on a line speed indicator (Ex. 4, pp. 136-140; Ex. 5, p. 239).

OSHA solicits comments on the limitation of hoisting speeds to 100 f.p.m. as opposed to the approach taken in the most recent ANSI B30.5 draft (Ex. 14, p. 6). ANSI states that movement of the work platform with personnel shall be done in a slow, controlled, cautious manner with no sudden movements of the crane or work platform. What speed should be considered as an upper limit of "slow"?

Paragraph (3)(i)(B) proposes a safety factor of 7 for the load hoist wire rope. "Safety factor" is defined in Section 1926.32(m) and applies to all 1926 standards. Wire rope safety factors are discussed in (A) Issue (4).

Paragraph (3)(i)(C) would require that when the personnel platform is placed into a stationary position where employees will perform the work, all brakes and locking devices that the crane or derrick is equipped with shall be engaged. The draft ANSI B30.5 standard contains a provision that is substantively the same (Ex. 14, p. 5).

Paragraph (3)(i)(D) will require that the load line hoist drum have controlled load lowering. If the crane or derrick is equipped with a free fall capability, it shall not be used during personnel hoisting operations. The ANSI drafts B30.5 and A10.28 require these same criteria. Maintaining control over the lowering of the load line under all circumstances is extremely critical when employees are suspended on a platform on the end of the loadline. If the hoist with which the operator is hoisting the personnel platform is equipped with the free fall capability, the operator must ensure that controlled load lowering is maintained and free fall is never used. OSHA solicits comments on what means are available on different cranes and derricks to ensure that free fall is not used. Should a positive lock-out of some sort be required? (See (A) Issue (2) for further discussion).

Paragraph (3)(i)(E) will require a firm and level foundation for cranes used to hoist the personnel platform. If the equipment is manufactured with outriggers, they must be used in accordance with the manufacturer's specifications when hoisting employees. The "Crane Handbook," published by the Construction Safety Association of Ontario, Canada states that the capacities listed in the load chart are based on the machine being dead level. A reduction of 5 to 30 percent of the chart capacity will occur when the crane is out of level by only one degree.

Paragraph (3)(i)(F) imposes a reduction of 50 percent on the rated capacity of the crane or derrick. Current standards (§ 1926.550(a)(2)) require load rating charts to be visible to the operator at the control station. This standard will require the operator never to exceed 50 percent of the posted capacity for the crane or derrick. Furthermore, this standard will require the employer to determine the weight of the platform; all additional weight imposed on the platform (employees and tools); and the related rigging prior to hoisting the platform in order to ensure that this weight does not exceed 50 percent of the crane or derrick's rated capacity.

Paragraph (3)(i)(G) would prohibit the use of any machine having a live boom to hoist employees. The draft ANSI A10.28 standard defines a live boom to be one in which lowering is controlled by a brake without aid from other lowering retarding devices.

Paragraph (3)(ii) contains provisions for additional instrumentation and components. It should be noted that the Agency is requiring these safeguards only on cranes or derricks when used to hoist employees in a suspended personnel platform.

The rated capacity of a crane or derrick is related to boom angle, boom length, or load radius, and means must be provided by which operators can determine whether the configuration of the lift is within approved limits.

Paragraph (3)(ii)(A) requires a boom angle indicator to be in view of the crane operator. Knowing the angle of the boom is a prerequisite to reading the load rating chart. Comments are solicited on whether there is the need for boom angle indicators on particular types of derricks. If so, what are those types and are there any special operating conditions?

Paragraph (3)(ii)(B) requires that telescoping booms have a means of clearly indicating the extended length to the operator. The boom length must also be known in order to read the load rating chart.

Comments are solicited on whether the boom angle and length or the load radius information is more beneficial to the operator of each type of affected machine. Are there feasible and reliable devices currently available that indicate this information to the operator?

Paragraph (3)(ii)(C) would require either an anti-two-blocking device or a two-block damage prevention feature to be installed on the crane or derrick hoisting the personnel platform. The device is actually an upper limit switch installed to prevent the hoist drum from pulling the block into the boom tip

sheaves. The damage prevention feature is meant to include various features within the hoist mechanism that would deactivate the hoisting action upon contact of the load block with the boom tip before enough force is generated to pull the boom over or to separate the load line. One such feature is an override that would stall the hydraulic fluid system. OSHA has included definitions of these two terms to alleviate problems that may arise from interpretations. The Agency could not find an industry recognized definition of these terms, necessitating the development of the language contained in the proposed rule. OSHA specifically solicits comment on these two definitions. OSHA also solicits comments on these and other positive methods to control two-blocking hazards. OSHA is particularly interested in other two-block damage prevention features on hoisting systems. Are there particular types of cranes or derricks upon which this equipment would not be feasible? ANSI drafts include an allowance for warning device feature. Under what conditions is this a more feasible approach than the device or damage prevention feature?

Telescoping booms possess additional means for causing a two-blocking accident. Is any device other than those proposed recommended to control this hazard?

Paragraph (4) contains the provisions specifically related to personnel platforms.

Paragraph (4)(i)(A) requires the personnel platform to be designed by a qualified engineer competent in structural design.

Paragraph (4)(i)(B) requires the suspension system to be designed to minimize tipping of the platform. This would require the various parts of the suspension system to distribute the load equally and to stabilize the platform. OSHA has been informed of single, triple and four-legged suspension systems that meet such criteria (Ex. 16). OSHA is not limiting the material used in this suspension system. The Agency has been informed that both wire rope or solid suspension members have been successfully used. The design engineer required by paragraph (4)(i)(A) would specify the material.

Paragraph (4)(i)(C) requires the personnel platform to be designed with a safety factor of five (See (A) Issue 4). OSHA solicits comment on the appropriateness of specifying a safety factor of five for ultimate breaking strength. Should the Agency specify an additional safety factor based on permanent deformation of the platform?

If so, what would be an appropriate safety factor?

Paragraph (4)(i)(D) would require a minimum height of six feet from the floor to suspension system to provide adequate headroom. The ACCSH recommended a minimum of six feet from the floor to the point of attachment for the rigging to ensure stability and to keep employees inside the entire unit (Ex. 12, pp. 114-116). OSHA solicits comment on whether this height is sufficient.

Paragraph (4)(ii) contains specifications that the engineer must include in the design of the personnel platform.

Perimeter protection is required by paragraph (4)(ii)(A). A choice of solid walls or expanded metal is to be used up to a height of 42 inches (± 3 inches) from the floor. Such protection will restrain employees from falling out, and also restrain tools which may be dropped or fall out of a waist apron or tool belt.

OSHA solicits comments on allowing standard guardrail systems for personnel platforms. Have accidents occurred involving personnel platforms with guardrail systems that would have been avoided if the walls were enclosed by solid construction or expanded metal? Are there particular operations that could not be performed because of the proposed requirements? If so, what are they and how do the proposed requirements hinder such operations?

A grab rail would be required by paragraph (4)(ii)(B) to be inside the employees platform to provide a safe handhold which would protect occupants' hands should the personnel platform's side contact another object. This grab rail could also serve as a tie-off point for the body belt lanyard, provided that proposed paragraph .550(g)(6)(ix) is complied with.

Paragraph (4)(ii)(C) contains criteria that an access gate must meet, if the personnel platform is provided with a gate. The ACCSH discussed requiring all personnel platforms to have doors (Ex. 4, pp. 127-129 and 172; Ex. 12, p. 143). Although they did not recommend requiring doors, they did agree that if there is a door it must open inward, and should be equipped with a device to prevent accidental opening. Some personnel platform designs, such as a one person barrel-type platform, may not be suitable for having an access gate (Ex. 16).

Paragraph (4)(ii)(D) requires overhead protection when employees are exposed to falling objects (See (A) Issue 6).

Paragraph (4)(ii)(E) would require all rough edges to which employees may be exposed to be ground smooth.

Paragraph (4)(ii)(F) would require that all welding for the personnel platform be performed by a welder qualified to do the type of work required by the designing engineer. This will do much to ensure the structural strength of the personnel platform. OSHA solicits comments on whether a welder meeting the definition of "qualified," as defined in § 1926.32(1), is sufficient or if a certified welder would be more appropriate. What type of welding should this welder be certified to perform? Additionally, should OSHA specify a particular welding standard to be met, or will the design engineer so specify? Should OSHA require proof testing after fabrication of the personnel platform? If so, what would be an appropriate weight and procedure?

Paragraph (4)(ii)(G) would require a permanent marking on the personnel platform to indicate the weight of the empty platform and the rated load capacity. This marking would indicate how much weight can be carried in the platform.

Paragraph (4)(ii)(H) would require the personnel platform to be easily identifiable either by color or by marking the platform. This will ensure that everyone knows the special purpose for this equipment, and will assist the crane or derrick operator to see the platform at a distance.

Paragraph (4)(iii)(A) would limit the loading of the personnel platform to its posted rated capacity.

Paragraph (4)(iii)(B) requires that the number of occupants on the platform not exceed that necessary to perform the work. OSHA believes that the Agency should not specify a limit of the number of occupants, but that the nature of the task which makes the use of the personnel platform necessary, and the designed size and rated capacity of the platform be the limiting factors (See (A) Issue 3).

Paragraph (4)(iii)(C) restricts the platform's use to employees, their tools, and only those materials necessary to do their work. The ACCSH stressed that only the tools and material necessary for the work should be hoisted, and that the platform not be used for hoisting bulk materials or other loads not related to the specific task involved (Ex. 4, pp. 197-203; Ex. 12, pp. 49-52, 102-112).

Paragraph (4)(iii)(D) would require all materials hoisted on the platform with employees to be secured and evenly distributed to balance the load.

Paragraph (4)(iv) covers the rigging used to suspend the personnel platform from the load block or fall ball.

Paragraph (4)(iv)(A) would require that when a wire rope bridle is used, the

bridle legs all connect to a ring or a shackle. This serves to equalize and consolidate all the load into one point of contact when this ring or shackle is hung on the hook or shackle from the load line block or fall ball.

Paragraph (4)(iv)(B) would require the ring or shackle on the end of the lifting bridle to be attached to the load line block or fall ball by a positive locking hook or a shackle, secured by a screw pin, nut and retaining pin. This will eliminate the possibility of the bridle being accidentally dropped out of the load block hook (See (A) Issue 8).

Paragraph (4)(iv)(C) would require that all rigging hardware have a safety factor of seven, which would equal the load line safety factor.

Paragraph (4)(iv)(D) would require that eyes in wire rope slings be fabricated with thimbles to distribute evenly the forces around the eye without kinking the wire rope.

Proposed paragraph (5) includes the additional inspection and testing requirements for this operation.

Paragraph (5)(i) would require that a competent person inspect such cranes and derricks at the beginning of each shift, and again if the crane or derrick has been used for any material handling operation in which greater than 50 percent of the rated capacity was lifted. This stresses that the crane or derrick must be in good condition and set up properly before any employees are hoisted.

Paragraph (5)(ii) would require a trial lift with the personnel platform unoccupied to ensure that all systems, controls, and safety devices are functioning properly. This trial lift must be made at the beginning of each shift and for each new work location. Work location refers to the location to which the platform is hoisted. When this location changes, the crane or derrick's configuration may change, i.e., the crane's superstructure may rotate or the boom angle may change, and the trial lift will ensure that critical components and safety devices are still functioning properly.

Paragraph (5)(iii) requires a test lift different than that described in the above paragraph. However, the two test lifts may be performed at the same time, if desired. A full-cycle operational test lift would require the operator to hoist an unoccupied personnel platform through the same maneuvers required for the actual lift. The unoccupied platform would be hoisted from the same location to the same working position and landed at the same place as the employees will be. The platform is to be loaded to 150 percent of the intended

load (that which will be on the platform during the work). This test lift is to be performed prior to hoisting employees at each new set-up location. Set-up refers to moving the crane to a different location, preparing the ground, setting the outriggers, etc.

OSHA has been informed during reviews of drafts of this rule that this operational test lift may not be necessary under all conditions. For example, if a crawler crane is operating on an area that is well compacted and has performed many lifts of material far in excess of the weight of the loaded personnel platform, an operator would naturally assume that the personnel lift could be safely made without an operational test. This would be especially true when the crane is operating on a surface of timbers or cribbing and the platform has been recently proof tested. OSHA seeks comment on the impact of paragraph (5)(iii) and recommendation of those circumstances or conditions under which this operational test lift should not be required.

Paragraph (iii)(A) requires an immediate visual inspection after the test lift to identify any adverse effects upon any component or structure of the crane, its outriggers and the supporting ground, as well as the platform.

Paragraph (iii)(B) would prohibit the crane or derrick from being used if the test resulted in defects which could present a safety hazard, such as instability or permanent deformation of any component.

Paragraph (6) contains the safe work practices to be followed when hoisting personnel platforms by the cranes and derricks listed in paragraph (g)(1)(i).

Paragraph (6)(i) would require employees to keep all parts of the body inside the platform except when working.

Paragraph (6)(ii) would ensure the stability of the platform prior to employees getting onto or off of the platform. The Agency solicits comment on the hazards of not securing the personnel platform and of any alternate methods of ensuring the personnel platform's stability.

Paragraph (6)(iii) would require tag lines to be used on the platform where their use is practical.

Paragraph (6)(iv) prohibits the crane from traveling while hoisting employees. OSHA must ensure the stability of cranes while employees are being hoisted. Paragraph (3)(i)(E) which requires firm, level footing and the use of outriggers, if so equipped, is another example of how OSHA is regulating the stability of the crane. However, OSHA has received comments that portal and

tower cranes operating on a fixed track can travel and not increase the risk to suspended employees. The Agency solicits comments on the listed exceptions (See (A) Issue 9).

Paragraph (6)(v) would require the operator to remain at the controls at all times while hoisting personnel.

Paragraph (6)(vi) would require employee hoisting to cease upon indication of any dangerous weather conditions or other impending danger. The draft ANSI A10.28 (Ex. 15, p. 5) specifically lists high winds, electrical storms, snow, ice, sleet, or other adverse weather conditions. The ACCSH (Ex. 12, pp. 147-148) recommended the proposed wording to include dangers other than the weather. OSHA solicits comments on the types of occurrences which would be hazardous enough to require discontinuance of the employee hoisting operation.

Paragraph (6)(vii) would require a check of the listed items prior to hoisting employees. This work practice of a last minute check prior to employees occupying the platform may identify some problems that need to be corrected before beginning the operation.

Paragraph (6)(viii) would require the hoisted employees to remain in continuous sight of and communication with the operator or signal person. A signal person would only be required when the operator cannot see the hoisted employees. Communication would include means such as voice contact or hand signals. This rule is taken from OSHA's standards on Marine Terminals, July 5, 1983 (48 FR 30920).

Paragraph (ix) would require a body belt and lanyard for each employee on the platform. The point of attachment should be based on the determination of which method is most suitable for the particular operation. The 1974 ACCSH recommended the lanyard be attached to the platform (Ex. 4, pp. 239-244; Ex. 5, p. 224). However, the 1983 ACCSH members recommended allowing the occupants to choose to tie off either to the load block or headache ball, or to a proper location within the platform (Ex. 12, pp. 128, 138-143). All structural members within the platform are to be designed with a safety factor of five which should be more than sufficient for a lanyard attachment point.

Paragraph (x) prohibits the use of bridles and associated hardware for any other service. Material handling involves rough service which may damage the equipment, making it unsuitable for employee hoisting.

Paragraph (7) contains the requirements for the pre-lift meeting. Paragraph (7)(i) would require a pre-lift

meeting of all associated employees to review the appropriate requirements of paragraph (g) and the operation.

Paragraph (7)(ii) would require such a meeting to be held prior to commencing any employee hoisting operations at a new work location and when a new employee joins the operation. A new work location, as discussed earlier, is considered to be the location to which the personnel platform is to be lifted.

OSHA considers such a review of this information critical to the proper conduct of such operations. The Agency solicits comment on these provisions, their impact on the industry, value to the operation and any specific recommendation for revision.

IV. Regulatory Impact Assessment, Regulatory Flexibility Certification, and Environmental Impact Assessment

SUMMARY OF EFFECTS

Affected Industries and Construction

The hoisting of personnel is performed throughout a broad range of four-digit Standard Industrial Classification Codes (SICs). OSHA has determined that the proposal could potentially affect all firms within SICs 1541, Industrial Buildings and Warehouses; 1542, Nonresidential, Not Elsewhere Classified; 1622, Bridge, Tunnel, and Elevated Highway Construction; 1623, Water, Sewer, Pipeline, Communication and Power Line Construction; 1629, Heavy Construction, Not Elsewhere Classified; 1791, Steel Erection, and 1795, Demolition. There were 39,897 firms in these SICs in 1977, and OSHA estimates that the number has decreased to about 35,000 firms in 1983. The reader should be advised that this number is an estimate of the number of firms that would need to be familiar with the proposed amendment rather than the considerably smaller number that would actually engage in hoisting personnel with cranes or derricks.

Feasibility, Benefits, and Costs

OSHA has determined that the proposal would be technologically feasible. The standard does not require any mechanical devices that are not presently available for use on cranes and derricks, although some cranes, especially those of older vintage, would require considerable modification in order to comply with the standard.

Benefits from the proposal would accrue to those workers who are at risk from current personnel hoisting practices in the construction industry. Although JACA, OSHA's contractor, was unable to estimate the total number of workers who would benefit from the

proposal in view of the infrequency of such operations and the wide diversity of potential applications (which could require a multitude of worker skills rather than a single job category). JACA was able to estimate that one injury occurs every 6,650 lifts. It should be noted that the same workers are likely to be involved in a number of lifts but to an indeterminable extent. JACA also estimated that 10 fatalities, 7 injuries involving total disability, and 25 injuries involving temporary disability would occur each year as a result of the hoisting of personnel by cranes or derricks in the absence of more stringent OSHA regulation. JACA concluded that full compliance with the proposed standard would prevent all of these injuries. JACA also estimated that an additional 5 fatalities and 16 injuries would result from workers riding the load or rigging in the absence of more stringent regulation. JACA concluded that full compliance with the proposed standard would prevent all of these accidents.

OSHA does not endorse any particular estimate for the value of an employee's life. However, for illustrative purposes, OSHA used two methods to estimate the monetary value of the benefits that would result from implementation of the standard. The first method, known as the "human capital" approach, was to estimate directly the foregone earnings and medical costs associated with an occupational injury or death. Lost production and medical costs to society, however, are the minimum benefits resulting from the prevention of an occupational injury. The other method of estimating benefits was based on the willingness-to-pay concept. Willingness to pay is the theoretical amount that the beneficiaries of a program would be willing to pay in order to obtain the benefits of the program or, in an occupational safety context, what a group of workers would pay to reduce the probability of a death or injury. Willingness to pay is therefore a more accurate indicator of the true social benefits of preventing injuries to workers.

Using the "human capital" approach, the present value (using a 10-percent discount rate) of the benefits of the standard over the 1983-1987 period would amount to \$54.84 million. The annual incremental benefits ranged from \$13 million to \$14 million on a current dollar basis over that period. On the basis of the willingness-to-pay concept, the present value of the benefits over the 1983-1987 period was estimated to range from \$93.4 million to \$152.5

million. The low estimate was based on the assumption that workers would be willing to pay \$900,000 and \$644,000 to avoid a death and total disability, respectively, whereas the high estimate was based on a willingness to pay of \$1.61 million and \$.97 million, respectively. A reasonable estimate of the present value of the expected benefits over the 1983-1987 period would be approximately \$89 million, which is the midpoint of the range of estimates based on the two approaches.

OSHA estimates that the annualized costs of full compliance with the proposed standard would range from \$5.5 million to \$5.8 million per year (on a current dollar basis) over the 1983-1987 period. The present value (using a 10-percent discount rate) of the total compliance costs likely to be incurred by industry in implementing the standard over this period would amount to about \$23.7 million. JACA concluded that such costs would not result in decreased competition within the construction industry and would be unlikely to force the closure of many firms. OSHA, therefore, finds the proposed standard to be economically feasible.

REGULATORY FLEXIBILITY CERTIFICATION AND ENVIRONMENTAL IMPACT ASSESSMENT

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96-353, 94 Stat. 1164 (5 U.S.C. 60 et seq.)), OSHA has assessed the impact of the proposed standard and concludes that it would not significantly affect a substantial number of small entities. Any potential differential impacts of compliance costs on the profit margins of small firms would be mitigated by the highly fragmented nature of the market structure in the construction industry, which would tend to minimize the extent of direct competition between small and large firms. Data from the U.S. Small Business Administration indicate that small firms, defined as those with annual revenues of less than \$10 million, account for about 98 percent of the total number of firms in the affected SICs.

OSHA estimated the economic impacts by firm size by examining the relationship between compliance costs (under both a low and high cost scenario) and annual contract revenues for three, size categories of model firms (annual revenues of \$11 million, \$50 million, and \$250 million). The ratio of these costs to annual revenues was nearly proportional across all size categories under the low-cost scenario

and increased slightly with size under the high cost scenario, indicating an absence of economies of scale. Assuming that firms would be forced to absorb all of their compliance costs, however, OSHA found that the percentage decline in the profit margins of small firms would be slightly greater than for larger firms. The actual extent of the decline was quite small, however, averaging about 2.5 percent a year for the small model firm compared to about 1 percent for the medium and large model firms. The significance of the differential impact on profit margins is further reduced by the likelihood that all firms in the industry should be able to pass on a substantial portion of their compliance costs. The demand for the projects built by construction firms most likely to rely on the hoisting of personnel by cranes or derricks would probably be quite inelastic, as no other lower or comparably priced substitutes for cranes appear to exist, regardless of firm size. This means that some construction firms and developers could not underbid on these projects because they would be unable to reduce operating costs merely by using equipment other than cranes to hoist personnel platforms or by redesigning structures to eliminate the use of cranes.

For these reasons, OSHA concludes that small entities would not be significantly affected by the proposal.

Environmental Impact Assessment

This proposal has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4231 et seq.), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and OSHA's DOL NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed revisions qualify as categorically excluded actions according to Subpart B, Section 11.10 of the DOL NEPA regulations and that the proposed rule would have no significant environmental impact outside of the workplace.

OSHA's proposal contains provisions for work practices and procedures to enhance worker safety and reduce safety hazards from the hoisting of personnel platforms by cranes and derricks. The provisions include design criteria for platforms and derricks, the inspection and testing of cranes and derricks, required test lifts, and worker training. Because the proposed revisions focus on the reduction of accident or injury by means of work practices and procedures, proper use and handling of

equipment, and training, they do not impact on air, water, or soil quality, plant or animal life, the use of land or aspects of the environment.

To the extent that the proposed safety procedures are in place and are integrated into daily construction operations, however, the potential for crane-related occupational accidents and injuries will be reduced and the safety of the workplace will be enhanced.

V. Public Participation

Interested persons are invited to submit written data, views and arguments with respect to this proposal. These comments must be postmarked by April 17, 1984 and submitted in quadruplicate to the Docket Officer, Docket S-370, U.S. Department of Labor, Occupational Safety and Health Administration, Room S-6212, 200 Constitution Avenue, NW., Washington, D.C. 20210.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding.

Additionally, under Section 6(b)(3) of the OSH Act (29 U.S.C. 657), Section 107 of the Construction Safety Act (41 U.S.C. 333), and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Officer at the address above and must comply with following conditions:

1. The objections must include the name, and address of the objector;
2. The objections must be postmarked by April 17, 1984;
3. The objections must specify with particularity the provisions of the proposed rule to which each objection is taken and must state the grounds therefore;
4. Each objection must be separately stated and numbered; and
5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

VI. Recordkeeping

The proposed standard contains a "collection of information" (recordkeeping) requirement pertaining to the posting of the platform's weight and load capacity (§ 1926.550(g)(4)(ii)(G)). In accordance with 5 CFR Part 1320 (48 FR 13666, Controlling Paperwork Burdens on the Public), OSHA has submitted the proposed recordkeeping requirement to the Office of Management and Budget (OMB) for review under section 3504(h)

of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Comments regarding the proposed recordkeeping requirement may be directed to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Occupational Safety and Health Administration, Washington, D.C. 20503.

VII. List of Subjects in 29 CFR Part 1926

Construction safety, Construction industry, Occupational safety and health; Protective equipment, Safety, tools.

VIII. State Plan Standards

The 24 States with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of the final rule. These States are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these States.

IX. Authority

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, D.C. 20210.

Accordingly, pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593; 29 U.S.C. 655), section 107 of the Construction Safety Act (83 Stat. 96, 40 U.S.C. 333), Secretary of Labor's Order No. 9-83 (48 FR 35736), and 29 CFR Part 1911, it is proposed to amend 29 CFR 1926.550 by adding a new paragraph (g) as set forth below.

Signed at Washington, D.C., this 14th day of February 1984.

Thorne G. Auchter,
Assistant Secretary of Labor.

PART 1926—[AMENDED]

29 CFR Part 1926 is proposed to be amended by adding a new paragraph (g) to § 1926.550 to read as follows:

§ 1926.550 Crane and derricks.

(g) Crane or derrick suspended personnel platforms.

(1) Scope and application. This standard applies to the hoisting of personnel platforms on the load line of friction or hydraulic portal, tower,

crawler, locomotive, truck, and wheel mounted cranes or derricks. No crane or derrick function shall be performed while an employee is on a personnel platform attached to a load line on such equipment unless the requirements of this paragraph are met. The practice of hoisting employees on such equipment is permitted only under specific circumstances, as specified in paragraph (g)(2).

Note.—For the purposes of this paragraph (g), "hoisting" means lowering, lifting or suspending.

(2) General requirement. The use of a friction or hydraulic portal, tower, crawler, locomotive, truck or wheel mounted crane or derrick to hoist personnel platforms shall be permitted when their use is as safe as the erection, use, or dismantling of conventional means of reaching the worksite, such as ladders, stairways, aerial lifts, elevating work platforms or scaffolds, or when those means are either more hazardous, or are not possible because of structural design or worksite conditions.

(3) Crane and derrick. (i) Operational criteria. The following general provisions apply when cranes of derricks are used to hoist employees.

(A) Lifting and lowering speeds shall not exceed 100 feet (30.48 m) per minute.

(B) The minimum load hoist wire rope safety factor shall be seven.

(C) Load and boom hoist drum brakes, swing brakes, and locking devices such as pawls or dogs, as equipped, shall be engaged when the occupied personnel platform is in a stationary working position.

(D) The load line hoist drum shall have controlled load lowering. Free fall is prohibited.

Note.—Controlled load lowering means a system or device on the power train, other than the load hoist brake, which can regulate the lowering rate of speed of the hoist mechanism.

(E) The crane shall be uniformly level within one percent of level grade and located on firm footing. Crane outriggers, if provided, shall be used according to manufacturers' specifications when hoisting employees.

(F) The total weight of the loaded personnel platform and related rigging shall not exceed 50 percent of the rated capacity for the radius and configuration of the crane or derrick.

(G) The use of machines having live booms is prohibited.

Note.—Live boom means a boom in which lowering is controlled by brake without aid from other lowering retarding devices.

(ii) Instruments and components. Cranes or derricks used to hoist

employees shall be equipped as follows:

(A) A boom angle indicator shall be installed on cranes, readily visible to the operator.

(B) Telescoping booms shall be marked or equipped with a device to clearly indicate at all times the boom's extended length to the operator.

(C) An anti-two-blocking device or two-block damage prevention feature shall be installed.

Note.—Anti-two-blocking device means a positive acting device which prevents contact between the load block or fall ball and the boom tip. Two-block damage prevention feature means a system which deactivates the hoisting action before damage occurs in the event of a two-block situation.

(4) *Personnel Platform.* (i) *Design criteria.* (A) The personnel platform shall be designed by a qualified engineer competent in structural design.

(B) The suspension system shall be designed to minimize tipping of the platform due to movement of employees occupying the platform.

(C) The entire personnel platform shall be designed with a minimum safety factor of five.

(D) Six feet (1.8 m) minimum headroom shall be provided for employees occupying the platform.

(ii) *Platform specifications.* (A) Each personnel platform shall be provided with perimeter protection from the floor to 42 inches (106.7 cm), \pm 3 inches 7.62 cm) above the floor, which shall consist of either solid construction or expanded metal having openings no greater than $\frac{1}{2}$ inch (1.27 cm).

(B) A grab rail shall be provided inside the personnel platform.

(C) An access gate, if provided, shall swing inward and shall be equipped with restraining device to prevent accidental opening.

(D) Overhead protection shall be provided on the personnel platform when employees are exposed to falling objects.

(E) All rough edges exposed to contact by employees occupying the platform shall be ground smooth.

(F) All welding shall be performed by a welder qualified for the weld grades, types and material specified in the design.

(G) The personnel platform shall be conspicuously posted with a plate or other permanent marking indicating the personnel platform weight and the rated load capacity of the personnel platform.

(H) Personnel platforms shall be easily identifiable by color or marking.

(iii) *Personnel platform loading.* (A) The rated load capacity of the personnel platform shall not be exceeded.

(B) The number of employees occupying the personnel platform shall not exceed the number required for the

work being performed.

(C) Personnel platforms shall be used only for employees, their tools, and sufficient materials to do their work.

(D) Materials on an occupied personnel platform shall be secured and evenly distributed while the platform is in motion.

(iv) *Rigging.* (A) When a wire rope bridle is used to connect the personnel platform to the load line, the bridle legs shall be connected to a single ring or shackle.

(B) Hooks on fall ball assemblies, lower load blocks, or other attachment assemblies shall be of a type that can be closed and locked, eliminating the hook throat opening. Alternatively, a shackle with a screw pin, nut and retaining pin may be used.

(C) Wire rope, shackles, rings, and other rigging hardware shall have a minimum safety factor of seven.

(D) All eyes in wire rope slings shall be fabricated with thimbles.

(5) *Inspection and testing.* (i) In addition to the inspections required by paragraphs (a)(5), (a)(6), (b)(2), and (e) of this section, cranes and derricks which are used to hoist personnel platforms shall be inspected by a competent person, as defined in § 1926.32(f), at the beginning of each shift and prior to hoisting employees on the personnel platform after the crane or derrick has been used for any material handling operations in which greater than 50 percent of the rated capacity was lifted.

(ii) A trial lift with the personnel platform unoccupied shall be made for each new work location and at the beginning of each shift to ensure that all systems, controls and safety devices are functioning properly.

Note.—Work location means the location to which the personnel platform is positioned.

(iii) A full-cycle operational test lift at 150 percent of the intended load of the personnel platform shall be made prior to hoisting of employees for the first time at each new set-up location.

Note.—Set-up location means the location to which the crane or derrick is brought and set-up including assembly and leveling.

(A) A visual inspection of the crane or derrick, personnel platform, and base support shall be conducted immediately after lift testing in order to determine whether the testing has produced any adverse effect upon any component or structure.

(B) Any defects found during such inspections which may create a safety hazard shall be corrected before further use.

(6) *Safe work practices.* (i) Employees shall keep all parts of their body inside the platform during raising, lowering,

and positioning.

(ii) If the personnel platform is not landed, it shall be secured to the structure before employees exit or enter the platform.

(iii) Tag lines shall be used where practical.

(iv) Hoisting of employees while the crane is traveling is prohibited, except for portal and tower cranes operating on a fixed track.

(v) The crane or derrick operator shall remain at the controls at all times when hoisting employees.

(vi) Hoisting of employees shall be discontinued upon indication of any dangerous weather conditions or other impending danger.

(vii) The platform shall be hoisted a few inches and inspected to assure that it is secure and properly balanced before employees are allowed to occupy the platform. Employees shall not be hoisted unless the following conditions are determined to exist:

(A) Hoist ropes shall be free of kinks;

(B) Multiple part lines shall not be twisted around each other;

(C) The primary attachment shall be centered over the platform and;

(D) If the wire rope is slack, the hoisting system shall be inspected to assure all ropes are properly seated on drums and in sheaves.

(viii) Employees being hoisted shall remain in continuous sight of and communication with the operator or signal person.

(ix) Employees occupying the personnel platform shall wear a body belt with lanyard appropriately attached to the load block or fall ball, or to a structural member within the personnel platform capable of supporting a fall impact for employees using the anchorage.

(x) Bridles and associated hardware used for attaching the personnel platform to the hoist line shall not be used for any other service.

(7) *Pre-lift meeting.* (i) A meeting attended by the crane or derrick operator, signal person(s) (if required), person(s) to be lifted, and the person responsible for the task to be performed shall be held to review the appropriate requirements of this paragraph (g) and the procedures to be followed.

(ii) This meeting shall be held prior to the beginning of personnel hoisting operations at each new work location and thereafter for any employees newly assigned to the operation.

(Sec. 6, 84 Stat. 1593 (29 U.S.C. 655); Sec. 107, 83 Stat. 96 (40 U.S.C. 333); Secretary of Labor's Order No. 9-83 (48 FR 35736); 29 CFR Part 1911)

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Part VII

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 271, 272, 273, 275, and 277
Food Stamp Program; Quality Control
Reviews; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, 275, and 277

[Amdt. No. 260]

Food Stamp Program, Quality Control Reviews

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rulemaking combines and finalizes two recent rules about the Quality Control (QC) system—an interim rule entitled "Error Rate Reduction System" (48 FR 23797 published on May 27, 1983) and a proposed rule entitled "Technical Amendments to the Quality Control Review Process" (48 FR 34650 published on July 29, 1983).

The provisions from the interim rule implement several changes required by the Food Stamp Act Amendments of 1982. These provisions allow the Department to increase the percentage of administrative funding provided to a State that has a relatively low rate of error or reduce the percentage of administrative funding provided to a State with an excessive error rate. The goal is to encourage State agencies to commit themselves to an improved administration of the program that will result in progressively lower error rates.

The provisions from the proposed rule implement various technical changes in the QC review process. State agencies administering the Food Stamp Program are required to conduct QC reviews as a part of the Performance Reporting System under the Food Stamp Act of 1977. These technical changes are based on the Department's experience in administering the QC system. These changes will improve the accuracy of error rate determinations, reduce workloads and costs, simplify the QC system, and increase the compatibility of Food Stamp-QC with the Aid to Families with Dependent Children (AFDC)-QC and Medicaid-QC.

This action also amends Food Stamp Program regulations to correct an error contained in the definition of State.

EFFECTIVE DATES: The provisions of the interim rule were effective on May 27, 1983. However, the statutory changes it embodies were effective October 1, 1982, except that such changes affecting negative case provisions for 55 percent enhanced funding (contained in 7 CFR 277.4(b)(7)) apply from October 1, 1981, through September 30, 1982.

The provisions in this regulation which were in the proposed rule are

effective October 1, 1983, except as specified in section 272.1(g)(68) of the regulations.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**Classification**

Justification for Establishing Effective Date. Robert E. Leard, Administrator of the Food and Nutrition Service, pursuant to 5 U.S.C. 553, has determined that good cause exists for making this rule effective less than 30 days after publication. That good cause is the need for certain provisions of this rule to be in place throughout the quality control review period, October 1983 through September 1984. As discussed in the later paragraphs of this preamble concerning implementation, the actual implementation of those provisions should require minimal efforts from State agencies and benefit them by helping them complete cases. As also discussed in those paragraphs, certain provisions can be implemented in January and April 1984 so that State agencies have sufficient time to make those procedural changes.

Executive Order 12291. This final rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified "not major." The rule will not have an annual effect on the economy of \$100 million or more, nor is it likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Because this rule will not affect the business community, it will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act. This rule has also been reviewed with regard to the requirements of Pub. L. 96-354, and Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that it will not have a significant economic impact on a substantial number of small entities. Part of this rule changes Federal regulations to incorporate the provisions of Pub. L. 97-253, the Food Stamp Act Amendments of

1982, designed to encourage State agencies to reduce errors made in the certification of households and reduce the resulting dollar losses. The other part of the rule implements various technical changes aimed at improving the QC review process. State and local welfare agencies will be affected since they administer the program and may be liable, through a reduction in Federal administrative funding, if error rates are not reduced, or may receive additional funding if their error rates are very low. State and local agencies should also experience a reduction in workloads and costs associated with a more simplified QC system. Individuals participating in the program will be affected should the increased accuracy of error rates result in the identification of an underissuance or overissuance in their benefits which would be subsequently corrected.

Paperwork Reduction Act.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control numbers as follows: 7 CFR 275, Control Number 0584-0303; and 7 CFR 275.14(c) and 275.21, Control numbers 0584-0074 and -0299.

Background

On May 27, 1983, the Department issued an interim rulemaking at 48 FR 23797, which implemented several changes to the Food Stamp Error Rate Reduction Program. Another rule was published on July 29, 1983, at 48 FR 34650 which proposed various technical changes to be made in the QC review process. A full explanation of the rationale and purpose of both rules was provided in the preamble of each rulemaking. Therefore this preamble deals only with significant issues raised by the commenters and the changes made as a result of these comments. A thorough understanding of the basis for the final rules may require reference to the interim and proposed rules.

The Department received a total of 22 comment letters on the interim rules entitled the "Error Rate Reduction System." There were 16 comment letters from State agencies, one from a local agency, two from public interest groups, and three from Food and Nutrition Service (FNS) Regional Offices.

A total of 57 commenters sent in suggestions and comments on the proposed rules entitled "Technical Amendments to the Quality Control Review Process." There were 45 comment letters from State agencies,

one from a local agency, two from State administrative associations, two from public interest groups, six from FNS Regional Offices, and one from the Department of Health and Human Services.

Error Rate Reduction System

General

Several commenters supported the Error Rate Reduction System as a means of reducing erroneous benefits. Many commenters objected to it being used primarily as the basis for establishing liabilities and asserted that it would reduce State agency resources which would otherwise be available to reduce errors. Commenters also objected to the annual error rate goals as arbitrary, and unfair because they did not take account of differences among State situations, and as unreasonable because of the increasingly large costs for reducing each additional percentage of error rate. These objections relate to legislatively imposed requirements and so the pertinent parts of the final rule remain unchanged.

Liabilities

The interim rule changed the definition of payment error rate to measure only dollars issued to ineligible cases and dollars overissued to eligible cases. Dollars underissued were excluded. Commenters on this provision supported it. Some State agencies further stated that client-caused errors should be excluded from error rate liabilities because including them penalizes State agencies for something over what they have little control. One State agency said that technical errors such as refusal or failure to comply with the work registration or job search requirements or refusal or failure to provide a social security number should not be included in the payment error rates since they do not result in an actual overpayment. There is no legislative support for excluding these types of errors, and the Department believes that they should continue to be included since they involve basic program requirements. The final rule is unchanged in this area. (See 7 CFR 271.2.)

Interim regulations retained the "good cause" provisions of the current regulations except for the "good faith effort." Several commenters objected to removal of this provision, which allows for liabilities to be waived when the State agency is showing good faith efforts to reduce its payment error rate. As discussed in the preamble to the interim rule, beginning in Fiscal Year 1983, Congress intended for the 33.3 and

66.7 percent reduction provisions to replace the "good faith effort." The final rule therefore remains unchanged. (See 7 CFR 275.25(d).)

Enhanced Funding

The interim rule also modified the provisions dealing with financial incentives for State agencies with low errors. It provided that, beginning with the Fiscal Year 1983 review period, a State agency's Federal share of administrative funding will be increased to 60 percent if the sum of its payment error rate and its rate of underissuance to eligible households is less than five percent, provided that its rate of invalid decisions in denying and terminating eligibility is less than the national weighted mean rate. Some commenters did not support using a national weighted mean negative error rate for determining a State's eligibility for enhanced funding. They wanted a quantified target to be set in advance. Therefore the Department has changed the final rule to say that in order to be eligible for enhanced funding, a State agency's negative case error rate must be less than the national weighted mean negative case error rate for the prior fiscal year. Thus, the goal will be known in advance and yet is related to standards met by many State agencies.

Two State agencies commented that enhanced funding should be granted to State agencies with error rates of five percent or less on errors on overpayment and ineligible only instead of also adding in rates for underissuance to eligible households and for invalid decisions in denying or terminating eligibility. They stated that the process for restoration of lost benefits and Management Evaluation (ME) review should be sufficient to ensure program integrity in areas of underissuances. Another State agency commented that enhanced administrative funds should be granted to State agencies that increase overpayment collections. State agencies already have an incentive for overpayment collections because the regulations allow them to retain 25 percent of the value of inadvertent household error claims collected and 50 percent of the value of intentional program violation claims collected. No changes in this area are being made in the final rule because the law is very specific about the conditions under which enhanced funding may be granted. (See 7 CFR 275.25(c).)

Technical Modifications to the Interim Rule

The 1982 Amendments changed the basis for determining the amount of

sanctions from food stamp issuance to administrative funding. This eliminated the potential for dual liability for payment error rates and also for negligence or fraud on the part of the State agency in the certification of applicant households. Therefore, the interim rule deleted § 275.25(d)(4)(iii) which dealt with the relationship between the QC sanction system and the negligence portion of the regulations. None of the commenters were opposed to this action.

The interim rule also added a provision that will ensure a State agency does not lose allowable administrative funding for noncompliance with a specific program requirement and for the effect of the noncompliance on the error rate. While FNS may continue to suspend and/or disallow Federal administrative funds if a State agency's administration of the program is ineffective or inefficient, the actual amount of funds withdrawn from the State agency will be adjusted if the specific reason for the disallowance contributes to the State agency's payment error rate, and the State agency is held liable for an excessive payment error rate during a given fiscal year. (Refer to the preamble of the interim rule for an example of this provision.) Two commenters agreed with this section, and no change is being made in the final rule. (See 7 CFR 275.25(d)(4)(ii).)

In connection with the change to error rate goals for each fiscal year, the interim rule changed the definition of QC review period from two semiannual periods to the one 12-month period from October 1 of each calendar year through September 30 of the following year. The definition also provided that the annual review period was made up of two 6-month reporting periods. The proposed rule provided for an annual report for the entire annual review period. This rule makes that requirement final and revises the definition accordingly. (See 7 CFR 271.2.)

The remainder of this preamble deals with issues raised in the proposed rule.

Technical Amendments to the Quality Control Review Process

Definitions

Active case. Current rules define an active case as a household which was certified for and received food coupons during the sample month. As discussed in the preamble to the proposed rule, some State agencies have had problems with this definition. The Department proposed to revise the definition to mean a "household which was certified

prior to or during the sample month and issued food stamp benefits for the sample month."

Seventeen comments were received on the proposed redefinition and the majority of them supported it. Several commenters indicated the need for further clarification of the revised definition, particularly as it relates to the treatment of households whose benefits for the sample month are not issued until the month subsequent to the sample month. These households are considered active cases so long as they are certified prior to or during the sample month. (See 7 CFR 275.2.)

Negative case. Sixteen out of twenty commenters voiced support for the Department's proposal to revise the definition of a negative case to mean a household which was denied certification or whose food stamps were terminated effective for the sample month. Two commenters questioned whether there has to be an actual interruption in the household's benefits in order for it to be considered terminated in the sample month. The focus of the review of negative cases is the determination of the correctness of the State agency's decision to deny or terminate the household. Whether in the case of terminations an actual interruption of benefits occurs is not a factor. So, households receiving continued benefits pending a fair hearing could appear as a negative case. The final rule is the same as the proposed. (See 7 CFR 271.2.)

Cumulative allotment error rate. The Department proposed to eliminate the definition of a cumulative allotment error rate from the regulations in order to bring the current rules in line with the 1982 Amendments related to the Error Rate Reduction System. This proposal received unanimous support from commenters. Therefore the definition of a cumulative allotment error rate has been deleted from section 271.2.

Administrative deficiencies. The Department received overwhelming support for the proposal to eliminate the concept of administrative deficiencies from the QC review system. Most commenters indicated support because this change would reduce the burden of identifying and reporting deficiencies which do not contribute to errors. The elimination of this reporting burden would allow State agencies to focus their resources on correcting errors which result in actual program losses. Several State agencies supported the proposal because it allowed them the flexibility to collect this information if they chose.

Out of 27 commenters on this proposal only two were totally opposed. The

opposing commenters believed that the QC system provides the only avenue for timely identification of patterns of deficiencies which would warrant corrective action in order to safeguard and prevent future errors and/or program losses. These commenters felt that ME reviews are not done frequently enough to provide for a continual flow of information on administrative deficiencies and therefore are not sufficient for monitoring program compliance. The Department believes that the structure of the ME system of reviews is adequate for identifying, reporting and developing Statewide corrective actions on these nondollar loss related errors. The final and proposed rules are the same with respect to eliminating the requirement for identifying and reporting administrative deficiencies. Some clarifying material is included, however, as discussed in the paragraph below concerning variance identification.

Quality Control Reviews

Scope and purpose. The proposed rule made several changes in the regulatory provisions concerning scope and purpose of quality control reviews.

Nearly all twenty-five commenters objected to the proposal that cases be reviewed against the Food Stamp Act and regulations, taking into account any waivers, and that State agency manual materials no longer be used for that purpose. There were several points of misunderstanding about this proposal.

Because the Department no longer has authority to require approval of State agency manuals prior to their use, the proposed rule eliminated the requirement for their use in the quality control review process. Commenters believed that the regulations did not allow reviewers to use State agency manuals and related policy guidance but limited them to the Food Stamp Act and regulations. The commenters noted that this would put an added burden on reviewers and cause conflicts between them and State agency program staff, and between State and Federal reviewers. While the Department no longer has the authority to require approval of manuals prior to their use, the rule does not prohibit their use for quality control review purposes. As stated in the preamble to the proposed rule, the Department expects that most State agencies will use their manuals as the basis for quality control reviews.

Since the Department is no longer approving manuals, commenters pointed out that Federal quality control reviewers would be finding errors in manuals before State agencies were otherwise notified of them and these

errors would affect the regressed error rate. Commenters objected to this use of quality control reviews and requested that FNS approval be reinstated or that State agencies be given time to correct manuals before an error is counted. Since the prohibition against FNS approval of manuals is in the statute, the Department cannot reinstate that approval. If State agencies were not liable for certification errors resulting from manual materials from the date those materials were in effect, presumably the date of implementation of the pertinent regulations, State agencies would have less of an incentive to implement regulations on time and in conformance with the regulations. For these reasons the final rule is the same as the proposed in these respects.

Other proposed changes were made to conform with the shift to payment error rate from cumulative allotment error rate and to restate, in part, the objectives of quality control reviews. One commenter contended that the quality control system is inadequate as a basis for sanctions as they are currently structured. The Department believes the current system is an adequate basis for determining sanctions and that the modifications provided by this rule will improve the system as discussed in various parts of this preamble.

Another commenter suggested that one of the stated objectives of the system be the determination of entitlement to enhanced funding. That has been added. The final rule also contains a restatement of the purpose of negative case reviews which are inadvertently not included in the proposed rule. (See 7 CFR 275.10 (a) and (b).)

Sampling plan. The Department proposed to correct a technical inconsistency in the regulation concerning prior approval of State quality control sampling plans by requiring State agencies to submit such plans as part of the State Plan of Operation along with other planning documents (i.e., the Disaster Plan (currently reserved) and the optional Nutrition Education Plan). The sampling plan serves as the foundation for FNS review of the integrity of the State agency's quality control sampling procedures. Prior FNS approval of sampling plans is in the best interest of the State agency because it protects the State agency from having its review findings disregarded and its error rates being assigned by FNS because of deficiencies in sampling procedures that are discovered too late for correction.

All commenters appeared to accept the concept of prior approval of sampling plans. Four commenters expressed a definite desire for FNS approval of their sampling plans prior to implementation. Prior approval was viewed by these commenters as being in the best interest of both State agencies and FNS. Most of the other comments on the sampling plan provisions focused on two general issues. These were the inclusion of sampling plans in the State Plan of Operation and the timeframes for submitting plans for prior FNS approval.

Two State agencies strongly objected to submitting the Sampling Plan as a part of their Plan of Operation. One of these indicated that all changes to its State Plan of Operation had to go through its Governor's Office, and this was a burdensome and time consuming process. Both commenters indicated that this requirement would likely have a negative impact on their ability to make timely changes to their sampling plans. The Department does not view this requirement as being unnecessarily burdensome or time consuming. With the exception of the Federal/State agreement, FNS does not require a Governor's approval on any part of the State Plan of Operation. We believe that approval of the sampling plan by the head of the agency administering the Food Stamp Program is sufficient for our purposes and that this will not result in delays to the submittal and approval process. The final rule therefore retains the requirement that the State agency Quality Control Sampling Plans be submitted to FNS for approval as a planning document under the State Plan of Operation. It also specifies that the Sampling Plan must be signed by the head of the State agency.

Several commenters were concerned with the proposed 60 day timeframe for the submittal of Sampling Plans. Two States suggested that the Department retain the current requirement that the sampling plan be submitted 30 days prior to implementation. Another State felt that 60 days for submittal is reasonable under normal circumstances, but that some consideration should be given to shortening this timeframe to 30 days under certain emergency situations. One FNS Regional Office suggested that FNS should require State agencies implementing integrated sampling designs for the first time to submit their plans at least 90 days prior to implementation. As stated in the preamble to the proposed regulation, the Department made this proposal primarily to allow FNS sufficient time to review and approve integrated sampling

plan submittals. These plans involve considerable coordination at the National Office level between FNS, the Social Security Administration (SSA), and the Health Care Financing Administration (HCFA), as well as extensive communications between the National and Regional Offices of FNS and State agencies. The final regulation provides that the 60 day timeframe applies to the initial submissions of and major revisions to sampling plans, and when sampling plans are being changed as a result of a general change in procedures. An example of this would be the changes in sample frames which this rule requires be effective by October 1984. The final rule also provides for a 30 day timeframe for submittal of minor changes in previously approved sample plans.

Several States and Regional Offices were also concerned with the timeframes for approval of sampling plans for the review period beginning October 1, 1983. To avoid placing undue burden on State agencies, the Department will consider the quality control sampling plan in effect for each State agency as of October 1, 1983, as submitted and approved, provided that the State agency has already obtained prior FNS approval of its sampling plan. Subsequent changes must be submitted for approval as a part of the State Plan of Operation in accordance with the timeframes specified in this rule. (See 7 CFR 272.2 and 275.11(a).)

Sample size. The proposed regulation provided for the implementation of an annual sampling period, a reduction in the minimum sample size requirements, and a requirement that State agencies agree to accept the level of reliability of the error rates resulting from the sample sizes which they select. A total of 24 commenters including State agencies, FNS Regional Offices, public interest groups, and other Federal agencies responded to these proposals.

Thirteen comments were received on the language to allow reductions in the minimum sample sizes. Commenters were about evenly split in voicing opposition and support. Three commenters opposed a reduction in sample sizes because they perceived that smaller samples could interfere with the use of QC data for corrective action purposes. Other commenters were concerned with the adequacy of the sample sizes for yielding reliable error rates for sanction purposes. Although the Department believes that the sample sizes proposed were adequate, it is retaining the current sizes to remove any question about reliability. For example, State agencies currently

required to sample at least 1,200 cases in a semiannual period will be required to sample 2,400 cases in annual period. The Department believes that each State agency shares in the responsibility for operating the QC system in an efficient and effective manner and therefore should be allowed the flexibility to manage the system in the manner most suited to its own particular needs and concerns. Consequently, the final rule provides State agencies the option of reducing their sample sizes, subject to the considerations discussed in the following paragraphs.

State agencies expressed strong opposition to the proposal that State agencies must agree not to challenge the reliability of their error rates based on the sample sizes they have chosen. Several commenters questioned the need for this requirement if, as stated in the preamble to the proposed regulation, the Department is satisfied with the reliability of the estimates that would have resulted from the new minimum levels. As stated in the proposed rule, the Department intends that in selecting their sample sizes State agencies consider what degree of reliability they need. The reliability statement was proposed as a means of assuring that State agencies consider the matter of reliability of error rates when they chose their active sample size. Therefore, State agencies exercising the option in the final rule to reduce the sample size for active cases must submit as part of their sampling plan a statement that they will not challenge the error rates based on their sample size. This required statement also applies to sample sizes computed on the basis of the provisions relating to unanticipated changes in caseloads. In no event may States opt to reduce their sample sizes below those stated in the proposed rule; for example a State required by these regulations to sample 2,400 active cases may, subject to providing the statement agreeing not to challenge its error rate based on its sample size, reduce its sample size to 1,200 cases, but may not sample any fewer cases. Any State agency which is currently reviewing on the basis of the proposed reduced sample sizes but which has not provided FNS a statement agreeing not to challenge the error rates based on sample size must provide the statement to the appropriate FNS Regional Office within 30 days of publication of this rule. Otherwise, no later than the second month after publication of this rule, the State agency must revert to the appropriate higher sample size.

Neither currently nor in the proposed rule is there a requirement for a routine,

periodic submission of changes to a State agency sampling plan. State agencies modify their sampling plans from time to time for such reasons as State agency procedural changes, changes in participation and sample sizes, and changes in Federal regulations. As a matter of practice, State agencies have been reviewing their sampling plans prior to each semiannual review period and providing changes to FNS for approval. The proposed rule did contain an explicit requirement that the sampling plan specify the sample sizes which a State agency chooses. No comments were received on this provision, and the final rule retains it. The final rule also adds the requirement that State agencies explain the basis for their sample size. For the most part this would be the demonstration of the calculation of the sample size. The Department believes that this is necessary because of the flexibility in the choice of sample sizes which these rules provide to State agencies. For this same reason and because of the provisions in the final rule described in the preceding paragraphs, the final rule requires that prior to each annual review period, State agencies must provide changes in their sampling plan for FNS approval according to the timeframes discussed in this preamble in the section immediately above. So, major changes would have to be submitted 60 days before the beginning of the annual review period (October 1) of each year; minor changes, 30 days before. State agencies choosing to reduce their sample sizes must annually renew their reliability certification.

Only one commenter, a public interest group, objected to the reduction in the minimum size of negative case samples. This was on the grounds that the reduction was proportionately more than for active cases and was not justified by the historically low negative error rates. The Department believes the key reason for the proposed reductions in the negative sample size was as stated in the preamble to the proposed rule, the change in focus of the negative reviews to the correctness of the decision to deny or terminate. For this reason and because negative case review findings are not used to determine State agency liability for payment errors (also stated in the preamble to the proposed rule), the final rule pertaining to minimum negative case sample sizes is the same as the proposed rule.

The proposal to shift the basis of the determination of a State agency's sample size from a semiannual to an

annual period brought mixed reactions. Four commenters supported the change and four others objected. Two States indicated that implementation of annual sampling in Food Stamp-QC without a similar change in AFDC-QC would result in disruptions to the integrated sampling process. Other commenters thought that annual sampling would hamper their error analysis activities or reduce the reliability of their error rates. Commenters incorrectly concluded that, in conjunction with annual sampling, the Department was requiring that all State agencies use the minimum sample sizes. This is not the case. In selecting their sample sizes, State agencies should consider their needs relative to error analysis and reliability. State agencies should also take account of the monthly disposition standards and the continuous flow of information which it will provide. The Department expects that State agencies which have integrated sampling plans but want to reduce their sample sizes can do so to some extent. This would be accomplished by submission of a change to the sampling plan. (See 7 CFR 272.2, and 275.11 (a) and (b).)

Sample selection. The proposed regulation would have required that State agencies select for review a twelfth of their annual sample each month during the annual sample period. The Department believed that this and the case disposition standards would ensure an even distribution and timely completion of quality control cases during the review period. The Department further proposed to use these requirements in place of the current requirement that State agencies must select their monthly sample no later than the 20th day of the month following the sample month. A majority of the commenters objected to the proposal to select a twelfth of the sample each month for several reasons. Some State agencies said that they would have to use a different sampling interval each month and develop complex procedures for weighting their sample results. Others indicated that this would require an accurate accounting of their caseload and therefore delay sample selection until the month after the sample month. Several States anticipated negative impacts on their integrated sampling designs.

The Department intended the one-twelfth figure as a guide to ensure that State agencies sample each month a number of cases consistent with completion of required sample sizes. To clarify this, the final rule provides for completion of approximately one-

twelfth of the sample each month. This should allow for the normal month to month differences resulting from such factors as variations in participation. In addition, the final rule provides that if, for such reasons as sampling techniques, the proportion of cases selected from month to month will not be approximately one-twelfth of the sample, then in its sampling plan the State agency will specify what number of cases will be selected each month.

Required sample size. Currently in order to assure that they select a sufficient number of cases which are subject to review, State agencies pull a larger sample than the size actually required. They then can avoid having their error rate adjusted for failure to complete the required sample size. In the process of this overpull, usually a number of cases which are subject to review are also selected. Current rules (at 7 CFR 275.11(f)) provide that these cases must be included in the required sample size. The purpose of this is to prevent potential bias. This could result from not reporting the results of a number of cases subject to review equal to the number in excess of the selected sample size.

The proposed rule did not include a comparable provision. Two State agencies raised questions about what the rules meant by "minimum required sample." To clarify this matter, the final rule contains a provision that a State agency's required sample size is the larger of either the number of cases selected which are subject to review or the number chosen for selection and review in the sampling plan. (See 7 CFR 275.11(d).)

Active case frame. The Department proposed several modifications to the active case sample frame and universe in order to facilitate the compilation of accurate sample frames in a timely manner with a minimum of administrative burden. Under the proposed rule both the active case frame and universe would exclude those households certified for benefits after the end of the sample month. The rule further clarifies that a household which participates during the review period is one which is issued benefits for the sample month. A corresponding change clarifies the required contents of supplemental lists which may be needed to ensure that the sample frame includes all cases in the universe.

The Department received eight comments on the changes to the active case sample frame and universe. Most commenters recommended changes to the current list of households which are classified as not subject to the review.

One commenter recommended that the list include households whose entire allotment is recovered for repayment of an overissuance claim, because it would require them to use a supplemental list from which cases would have to be selected manually. The commenter indicated that the number of these cases would be small and therefore not worth the time and expense of the added sampling procedure. The Department agrees that the number of such households will be small but believes that such cases should be sampled as any other active case to determine the accuracy of the State agency's actions. (See 7 CFR 275.11(e)(1).)

Negative case frame. As discussed above under the paragraphs concerning definitions, the Department proposed to change the definition of negative cases. As a result the universe for negative cases would be all households whose application for food stamps was denied or whose certification was terminated effective for the sample month, with the exception of certain cases which are not usually amenable to quality control review.

Six commenters responded to this provision. Although some commenters requested clarification on specific questions, there was no opposition to the proposed change in focus. One commenter questioned whether a negative action is subject to review if the review date falls outside of the annual review period, for example, if the decision to terminate a case is made on September 19, but the action is effective in October. If September is the sample month, since the action was not effective in the sample month, the action would not be subject to review and not a part of the negative case universe. If October is the sample month, since the action is effective in the sample month, it is subject to review for October (in the new annual review period). Its review date is September 19. (See 7 CFR 275.11(e)(2).)

Review of Active Cases

Household case record review. The proposed rule removed the requirement that when a case record cannot be located the review must be terminated and reported as not complete. Instead of terminating the review, the reviewer would use the household issuance record to identify as many pertinent facts as possible and to plan the field investigation.

Seven State agencies and two Regional Offices commented on this proposal. The primary concern was that without the case record reviewers would be unable to complete reviews or would have to devote an inordinate amount of

time to such reviews. Several commenters believed that the Department expected the reviewer to reconstruct the case record and to determine the variances involved, such as those resulting from the original certification action and from failure to report. The Department is not requiring this level of review. It is requiring, at a minimum, only a review to determine household eligibility and the correctness of the allotment for the sample month. What few variances may be identified during the field review should be appropriately coded and reported. This procedure should reduce State agency workload and result in more cases being completed. A second issue raised, the treatment of instances when the reviewer cannot locate the household case record or the household itself, is discussed later in connection with the disposition of case reviews.

Field investigation. The proposed rule allowed State agencies to terminate field investigations at the point the reviewer could determine and verify that the household was ineligible if that ineligibility could be resolved with the household. Twenty comments were received on this proposal, sixteen from State agencies, two from Regional Offices, and one from the Department of Health and Human Services (DHHS). Twelve commenters supported the proposed change. Several commenters asked about the condition for resolution with the household. The need for such resolution was questioned. It was suggested that Federal rereviews and fair hearings should be used to resolve these situations.

The preamble to the proposed rule described the resolution of ineligibility with the household as a confirmation of ineligibility with the household. The Department believes that this may not be possible in some instances when information indicates that the household is ineligible. The Department believes, however, that some care needs to be taken in such situations to avoid erroneous terminations of household participation. Consequently, the final rule provides that when the information on which a determination of ineligibility is based was not obtained from the household, the reviewer must confirm the correctness of the information as described in § 275.12(c)(2). This section pertains to such situations in general and does not require contact with the household in all cases.

Two commenters opposed the proposal for such abbreviated reviews because it would result in State agencies collecting less information about cases treated in the abbreviated manner proposed. Abbreviated reviews are

optional; those State agencies wishing to continue reviews after ineligibility is verified may do so. One commenter noted that extensive work would be required if an abbreviated review case is later found eligible. The verification standards implemented with this rule should keep such instances at a minimum. (See 7 CFR 275.12 (b) and (c).)

Variance identification. The final rule contains the same provisions concerning the identification of variances, and the types of variances included in and excluded from error analysis. To avoid confusion about the treatment of findings related to certain elements, the final rule includes examples of such situations. For instance, a State agency's failure to take appropriate disqualification action for a household member's failure or refusal to register for work is an example of an included variance; failure to have a work registration form on file is a finding which the State agency need not act on or report to FNS. Such findings are included as administrative deficiencies in current rules, and the examples cited in this final rule are taken from that area of the current rules. (See 7 CFR 275.12(d).)

Error analysis and reporting. The proposed rule provided that the sample case is considered complete at the point ineligibility is determined whether or not the State agency terminates the review at that point. Under the proposal, the reviewer would only be required to code and report those variances that directly contributed to the error determination. We received five comments on this proposal, four from State agencies and one from a Regional Office. All supported the proposal. The final rule is unchanged from the proposed rule. (See 7 CFR 275.12 (e) and (f).)

Disposition of case reviews. The proposed rule provided for several changes in the disposition of case reviews to make it easier for State agencies to complete cases. The Department received a total of 56 comments on these changes.

The first proposal concerned cases where the case record is located but the household cannot be located at the address known to the State agency. If the reviewer takes certain steps to locate the household and if the household still cannot be located but the State agency has evidence that it existed, then the case can be reported as not subject to review. Twenty-two comments were received on this proposal, 19 from State agencies and three from Regional Offices. Twelve commenters stated general support for

the proposal. The most frequently expressed concern was that making all of the required contacts about a missing household's current address was ineffective because some of the sources would be unlikely to have information about the household. To provide State agencies with some flexibility in this area, the final rule provides that State agencies can determine which sources are most likely to know the household's current address and that at least two contacts be made. To help assure that these contacts are reasonably useful, the final rule also provides that Regional Offices will monitor the results of the contacts.

Several comments indicated a misunderstanding about the disposition of cases in which the household could not be located after the reviewer made the required contacts. Even though the contacts cannot provide the household's current address, so long as the State agency has evidence that the household did exist, such cases are not subject to review and are not counted against the 100 percent completion rate. Several commenters asked what would constitute evidence that the household did exist. This evidence usually appears during the normal course of the review. For example, the case record may provide birth certificates, pay stubs, or other documents, and sources contacted may indicate that they know the household. If such evidence does not become apparent, then the reviewer would have to make a special effort to locate and document it. For example, employers may need to be contacted. The final rule provides that adequate documentation in this regard is either documentary evidence of two different elements of eligibility or basis of issuance such as a birth certificate or pay stubs; or the statement of a collateral contact indicating that the household did exist. It should be noted that in these situations the reviewer has located the case record. (See 7 CFR 275.12(g).)

In connection with the policy on completing reviews when the case record cannot be found (discussed in the paragraphs above on household case record review), one commenter asked about the treatment of instances when neither the case record nor the household can be found. The proposed rule made no change in policy with respect to such situations. These cases must be reported as not complete. It is only situations where the case record is not missing that the case can be reported complete if the prescribed actions are taken. Section 275.12(g)(1) has been rewritten to clarify this policy.

The proposal also dealt with households refusing to cooperate with the reviewer. Such a household would have its participation terminated until it cooperated with the reviewer or until 95 days after the end of the annual review period, whichever came first. Also, the proposed rule described certain circumstances when a household's unwillingness to cooperate with the reviewer would be considered as refusal to cooperate. Thirty-five comments were received on this proposal, 31 from State agencies, three from Regional Offices, and one from a public interest group. Eight commenters supported the proposal, and one objected. Concern was expressed about the length of the penalty period, tracking terminated cases, and the difficulty in reviewing cases where the household agrees to cooperate many months after the sample month.

The Department would point out that the penalty period is a disqualification period which the household can end by cooperating with the quality control reviewer. A copy of the termination notice in the casefile or a code in a computerized data base should be sufficient for tracking households. Reviewing stale cases can present problems, but the Department wants to give State agencies every chance to complete all cases subject to review. To further encourage household cooperation with quality control reviewers, the final rule provides that after the termination period ends, households which have failed to cooperate with the reviewer, should they reapply, would be subject to 100 percent verification to the determined eligible. Another concern in this area was the disposition of cases originally reported not complete because of household refusal to cooperate when the household later cooperates. This would be sufficient reason to allow the case to be disposed of as a complete case and counted towards the required sample completion. (See 7 CFR 273.2(d) and 275.12(g)(1)(iii).)

Comments on the proposed 100 percent completion rate contained objections to the proposed treatment of cases involving refusal to cooperate because often the households which refuse to cooperate are not participating at the time of the review. Consequently, the termination penalty is no incentive to them to cooperate. Commenters also pointed out that some cases can be completed without household cooperation. To help State agencies complete these cases, the final rule adds that before it is referred for termination a household refusing to cooperate must

first be notified of the penalties for refusal with respect to termination and reapplication and the possibility that its case will be referred for investigation of willful misrepresentation. If the household still refuses to cooperate, the reviewer may try to complete the review and would refer the household for termination of its participation. This referral is required without regard to the results of the reviewer's attempt to complete the review without household cooperation. The final rules also stipulates that prior to taking these steps State agencies are expected to employ other administrative techniques to persuade households to cooperate. These are such things as having the eligibility worker contact the household, assigning the case of another quality control reviewer, and writing the household a letter from a State official such as the welfare commissioner. (See 7 CFR 275.12(g)(1)(ii).)

In addition to these changes the Department is making another change in the final rules which should further enhance the likelihood of completing cases. The proposed rule eliminated the provisions stating that FNS will help State agencies complete cases reported not complete because of household failure to cooperate or because the household could not be located. Because of the actions a State agency can take when a household cannot be located at an address known to the State agency, and so either locate the household and complete the case or report it as not subject to review, the Department believes that only rarely will such cases be reported as not complete. With respect to cases reported as not complete due to household refusal to cooperate, the final rule provides that FNS Regional Offices will assist State agencies in their completion. (See 7 CFR 275.3(c)(1)(iii).)

The proposed rules also provided that cases could not be reported not complete because the State agency could not complete them in time to meet the time standards for disposition. One commenter spoke to this change and supported it. (See 7 CFR 273.12(g)(1).)

Review of Negative Cases

The proposed rule limited negative case reviews to a determination of the validity of the reason for denial or termination as documented in the household case record. The reviewer would examine the household case record and verify through documentation in the file whether the reason given for the denial or termination was valid, or whether the denial or termination was valid for any

other reason documented in the casefile. If such documentation were present, the case would be considered valid. When the case record alone did not prove ineligibility, the reviewer would attempt to verify the element(s) in question through a phone call to a collateral contact designated in the case record. If the reviewer was able to verify through such a collateral source that a household was correctly denied or terminated from the Program, the negative case would be considered valid. If the reviewer was unable to verify the correctness of the State agency's decision to deny or terminate a household's participation through documentation or collateral contact, the negative case would be considered invalid. In addition, the proposal limited the instances in which a negative case would be classified as not completed to those situations where the reviewer, after all reasonable efforts, was unable to locate the case record. Language was also added to clarify that a negative case could not be reported as not completed solely because the State agency was unable to process the case review in time for it to be reported in accordance with the quality control system's reporting requirements, unless the State agency obtained prior FNS approval to do so.

Twenty-one comments were received on this proposal. Comments were generally favorable, especially with regard to the extent of consistency with AFDC and Medicaid procedures for review of negative actions. Commenters suggested that the term "invalid decision" be changed to "incorrect reason" to better describe the review process. The final rule has made this change. Commenters also stated that limiting collateral contacts to ones in the case record and not allowing contact with the household unnecessarily hampered the review process. The final rule allows State agencies to contact the household and collateral contacts. It should be noted, however, that such contacts are limited to the elements involved in the eligibility worker's decision. One commenter pointed out that since there is no longer a field review involved with reviews of negative cases, a case could not be determined not subject to review for the reason that all household members had died or moved out of State. The provision has been deleted. Several commenters expressed concern that the proposed policy would allow too much conjecture on the part of reviewers about the correctness of eligibility worker decisions. This should not be a problem since the new verification and

documentation standards establish standards for documenting the basis of quality control reviewer decisions. (See 7 CFR 275.13.)

Review Processing

The proposed regulation required State agencies to use FNS-designed handbooks, worksheets, and coding forms in the QC review process. The Department received comments from five State agencies on these provisions. Three commenters emphasized the need for a complete and continually updated handbook and that the handbook be distributed in sufficient time and quantity to allow for training of staff. The Department understands this concern and the need to provide such materials accurately and on a timely basis. No change is being made to this section of the final rule. (See 7 CFR 275.14.)

Quality Control Review Reports

Individual cases. The new requirement for State agencies to meet monthly disposition standards received numerous comments. The proposal was for each State agency to dispose of and report the findings of 90 percent of all cases selected in a given sample month within 75 days of the end of the sample month, and 100 percent of all cases within 95 days of the end of the sample month. Several commenters supported these timeframes. However, the majority of comments, for various reasons, were against this provision. The predominant reason for opposing this provision was that the timeframes proposed by the Department were inconsistent with timeframes for the AFDC program. The AFDC standards require submission of 90 percent (or all but five cases) of the cases selected in the active case sample each month within 75 days after the end of the sample month. The same standard applies to cases selected from the negative case sample. AFDC also requires that 100 percent of the cases selected in the active and negative case samples be submitted within 120 days after the end of the quarter. Other commenters were opposed to this section of the regulations because of the amount of time needed to select the sample or to complete difficult cases which involve complex policy applications or in which the household refuses to cooperate.

The Department agrees that the timeframes should be compatible with AFDC and is continuing to work with the Department of Health and Human Services to standardize disposition standards for the two programs. However, the Department remains concerned about the timeliness of QC

data. Many complaints have been voiced about the length of time for completing quality control reviews and for reporting the results timely enough to take effective corrective action. The Department also wants to avoid the current problem of backlogs of quality control reviews occurring at the end of the reporting period. Therefore, this provision remains the same as in the proposed rule.

Another new requirement in the proposed rule was that if a case has not been disposed of within 95 days from the end of a given sample month, the State agency would be required to immediately inform its FNS Regional Office of why the case remains pending, the progress of the review to date, and when the case(s) will be disposed of. The FNS Regional Office would use this information to determine whether the State agency has made a good faith effort in disposing of a case or whether the case would be considered overdue. FNS proposed to suspend or disallow a percentage of the State agency's Federal administrative funding when cases are overdue, depending upon the number of overdue cases. The proposal provided for a suspension or a disallowable of one percent of a State agency's Federal funding for quality control for every one percent of its required case reviews overdue in a review period. Several commenters wanted this provision to set out specific criteria for imposing the sanction so that sanctions would be applied in an equal and predefined method. They wanted a definition of sufficient justification for pending status and a quantification of the number of overdue cases. A few State agencies commented that meeting the disposition standards would not be a problem as long as FNS accepts the State agency's explanation about why some cases cannot be completed on time and makes a quick decision as to whether the State agency is making a good faith effort to complete the case. The Department believes that in order to receive timely data it is important to keep the disposition standards and impose a penalty if they are not met. The Department also understands that some reviews require more time to do than others and allowing the State agency to submit progress reports provides the flexibility necessary to complete some cases. The final rule leaves this provision unchanged except that it deletes the specification of the one percent criteria for invoking a sanction. The Department believes that this is too rigid a guideline and prefers to allow Regional Offices to monitor State

agency performance in this area and take action case by case.

Some comments indicated that there is confusion between the disposition standard and the completion standard. The disposition standard requires that 90 and 100 percent of selected cases be disposed of and reported on within 75 days and 95 days, respectively, of the end of the sample month. After the 95-day time period, cases which are not adequately justified as incomplete because review action is not finished are considered in possible sanction action. Cases reported not complete for cause, such as household failure to cooperate, as well as cases reported complete and not subject to review, would not be considered for such action. The case completion standard is pertinent only 95 days after the end of the entire review period when, in the process of adjusting the regressed error rate, all cases not complete for any reason are tallied and assigned two standard deviations. (The completion standard is further discussed later in the preamble under the paragraph on the determination of payment error rates.)

The proposed rules contained a provision that State agencies would report findings from individual active cases by submitting the edited findings on the Integrated Review Schedule, Form FNS-380-1. For negative cases, the State agency would submit the edited findings on the Negative Quality Control Review Schedule, Form FNS-245. The State agency would report review findings by inputting and editing the results of each case in the FNS-supplied computer terminal and transmitting the data to the host computer. For State agencies that do not have FNS-supplied terminals, the State agency would submit the results of each QC review in a format specified by FNS. The final rules clarify that the results of negative cases are entered into the computer which produces a summary and only the summary report is sent to FNS. In order to meet the 75/95 day disposition standards, the reviews must be both completed and reported. A few commenters said that there are problems with timely transmissions of data on the FNS terminals. In that situation the State agency should specify in the report sent to FNS (as described in § 275.21(b)(4)) that cases are overdue because of data transmission problems. The Department would point out that it will entertain requests for alternate computer reporting and use of the FNS-supplied terminals which State agencies may submit under the waiver provisions in § 272.1(c). In addition, State agencies

may request FNS to change the results of a review in circumstances where that is justified. For example, FNS would consider changing a case where a household that had previously refused to cooperate subsequently agrees to cooperate so that the review can be completed.

In order to do Federal validation reviews, the proposed regulations would have required State agencies to supply its Regional Office with individual household case records, or copies of the pertinent information contained in the case records, as well as hard copies of individual Forms FNS-380-1 and FNS-245. The State agency would provide these materials to the FNS Regional Office within 10 days of receipt of a request. This material can be either originals or copies. The final regulations clarify that the copies must be legible. (See 7 CFR 275.21(b).)

Other reports. The proposal required each State agency to report to FNS about the monthly progress of sample selection and completion (Form FNS-248) no later than 95 days after the end of the sample month, and to submit a summary report of the results of all quality control reviews (Form FNS-247) no later than 95 days from the end of the annual review period. Several commenters said that manual reports are a duplication of what can be generated by the automated system and should be eliminated. The Department does not intend for State agencies to submit duplicate reports. Each State agency has the flexibility of submitting manually generated reports or utilizing the automated system to generate and transmit the required information. A clarifying phrase about this has been added to the final rules. Some State agencies commented that the due date for Form FNS-245 coincides with the due date for reporting the last case for the sample month and some time needs to be allowed for preparation of the report. The 95 day deadline is not the last date for working on the case reviews. The results must be reported by that date. Therefore, it seems reasonable to expect the Status of Sample Selection and Completion report to be ready at the same time. This provision remains the same as the proposed rule. (See 7 CFR 275.21 (c) and (d).)

Federal Monitoring

The proposed rule provided for various changes in the way that FNS would conduct reviews to determine the accuracy of State agencies' reported sample case review findings and determine State agency error rates. The proposed changes were designed to strengthen the Federal validation

process by allowing FNS to direct its Regional Office resources where they are most needed so that FNS could continue meeting its responsibility, under the law, for ensuring that State agencies' error rates are accurate for purposes of determining liability for sanctions and eligibility for enhanced funding.

Selective validation. The Department solicited comments on a proposal to validate State agency error rates selectively based on such factors as a State agency's historical performance in operating the quality control system. Fifteen comments were received, most of them from State agencies. Opposition to the proposal was general. Most commenters objected on the grounds that all State agencies should be tested similarly with respect to error rate determinations and because of the lack of defined criteria for selecting error rates to validate.

The Department has decided not to pursue plans for selective validation at this time because of the possible inequities in treatment of State agencies. The Department also has decided that selective validation is not timely since the quality control system is currently shifting to using absolute error rates.

State Agency error rates. The proposed rule replaced the provision of current regulations governing the cumulative allotment error rate with separate provisions outlining the content of the payment error and underissuance error rates. The payment error rate would include the value of the allotments reported as overissued, including overissuances in ineligible cases, for those cases included in the active case error rate. The underissuance error rate would include the value of allotments reported as underissued for those cases included in the active case error rate. In addition, the proposed rulemaking reorganized the provisions relative to the content of the State agency's active case error, payment error, underissuance error, and negative case error rates by locating them in the section of the Program's regulations which govern the determination of a State agency's Program performance. This change reflects FNS responsibility for generating State agency error rates. The one comment on these proposals was based on an apparent failure to realize that payment error rate and underissuance error rate were redefined in the interim rule on quality control error rate reduction (48 FR 23797, published May 27, 1983). These new definitions are included in this final rule. (See 7 CFR 275.25(c).)

Validation of State agency error rates.

The proposed rule contained a number of changes in the process of validating State agency error rates.

First it provided that FNS would validate each State agency's active case error rate, payment error rate, and underissuance error rate during each annual quality control review period.

Second, it proposed that FNS would validate the State agency's negative case error rate only when the State agency's payment and underissuance error rates for an annual review period would appear to entitle it to an increased share of Federal administrative funding and its negative case error rate is less than the national weighted mean negative case error rate applicable to the period of such enhanced funding. Two comments were received on this proposal; neither objected to it. As mentioned above in the discussion of the error reduction rule, this final rule provides that the negative case error rate standard is the prior year's national weighted mean negative case error rate.

The proposed rule replaced the current formula used for determining the Federal rereview sample sizes for both active and negative cases with separate formulas for each type of case. These formulas distributed the Federal samples among State agencies according to their annual sample sizes. Several commenters objected to the size of the samples especially as a basis for regression. The proposed sample sizes increase the Federal samples relative to the State sample and the Department believes that the sizes are adequate and is making no change in them in the final rule.

The proposed rule also concentrated the Federal validation process on desk reviews of State agencies' active sample cases supplemented by telephone interviews with participants or collateral contacts, and field investigations to the extent necessary for active cases. For negative cases, the FNS Regional Office would conduct case record reviews to the extent necessary to determine whether the household case record contained sufficient documentation to justify the State agency's quality control findings about the correctness of the agency's decision to deny or terminate a household's participation. Related to these changes, the proposed rule provided that FNS Regional Offices would return cases to the State agency for appropriate action on an individual case basis whenever the Federal reviewer determined that the State agency incorrectly disposed of and reported cases as not completed or not subject to review. Cases could also

be returned if the Regional Office reviewer was unable to determine the accuracy of the State agency's findings due to insufficient documentary evidence to support the verification required by FNS guidelines. The State agency would have 30 days to take appropriate action and report the findings. As with cases not disposed of timely, State agencies were required to report adequate reasons for each case that remained pending after 30 days of the date it was returned by the Regional Office or have the case be considered overdue and subject to fiscal sanctions.

Thirty-four comments were received on the proposal about desk reviews and the return of cases. Most comments opposed the proposal, although a few supported it. Concerns fell into several major areas: the additional work for State agencies which the proposed return of cases would cause; the basis for Regional Office determination of incorrectly disposed and incomplete cases; and the impact on error rates of State agency correction and completion of returned cases. The return of cases to State agencies was proposed as a means of ensuring compliance with the verification and documentation standards. Compliance with them would mean that most cases in the Federal subsample would be correctly and completely done. Returned cases would likely have few and limited problems. Regional Office determinations about the correctness and completeness of cases would be consistent since their basis would be the verification and documentation standards and the regulations on case disposition. The original findings of the State agency would not be changed by findings of returned cases. Those findings would be used to compute the Federal error rates.

Because of the concerns expressed, the final rule does not include the provision for the return of incorrectly disposed of and incorrect cases. State agencies are advised, however that, as provided in § 276.4, a failure to meet the verification and documentation standards may be the basis for a determination that a State agency's administration of the Food Stamp Program is inefficient and ineffective and may subject the State agency to suspension or disallowance of administrative funds.

Lastly, the proposed rule eliminated the provision of current regulations stating that FNS will assist State agencies in completing cases that State agencies fail to complete initially. This final rule reinstates that provision for cases reported not complete because of household refusal to cooperate. Because of its relation to case disposition,

discussion of this change is in earlier paragraphs concerning case disposition. (See 7 CFR 275.3(c)).

Determination of Payment Error Rates. The proposed rule retains the procedure of current Program regulations for adjusting the State agency's error rates to account for incorrect sample selection. In addition, the rule proposes to increase the case completion standard from 95 percent to 100 percent of the minimum required sample size, to adjust the State agency's error rates for failure to meet the 100 percent standard, and to increase the penalty for such failure. In order to calculate the State agency's official error rates, FNS would adjust the State agency's error rates if it fails to complete 100 percent of its minimum required sample size by assigning two standard deviations of the estimated error rates added to the regressed error rates, to those cases not completed. Thirty-one comments were received on these changes, most of which objected to the 100 percent completion standard on the grounds that it is unrealistic and the penalty unavoidable. The Department believes that the 100 percent completion standard is the only standard which will ensure that State agencies make every reasonable attempt to complete their samples and so minimize any bias which incompleteness causes. Because of the changes which this rule makes in what cases must now be counted not complete, the Department believes that many State agencies will complete such a high percentage of their required minimum sample size that the penalty will cause no more of a liability under the error reduction provisions than without the calculation of the two standard deviations. While this may be the general situation, some State agencies may not achieve a high enough completion rate to avoid incurring a liability for incomplete cases. The Department believes that the increased liability in such situations is appropriate and necessary as an incentive and to reflect the possible errors in those cases. This will mean that all State agencies have, in effect, the same completion standards. The final rule contains the provisions as proposed relative to determining error rates with the exception of the elimination of some words relating to selective validation. (See 7 CFR 275.25(e)(6)).

Implementation

The provisions of this rule are effective beginning with the start of Fiscal Year 1984, with the following two exceptions.

First, all cases sampled for the six months October 1983 through March 1984 are due 95 days after March 31, 1984. The disposition standards for sampled cases specified in § 275.21 are effective for April 1984 and later sample cases. This should allow State agencies sufficient time to adjust their sample selection, case assignment, and related procedures in order to meet the new timeliness standards.

Second, no later than October 1, 1984, all State agencies must have revised their sample frames for active and negative cases. This should allow State agencies sufficient time to develop and obtain approval for changes in their sampling plans. (See 7 CFR 275.11(a) and 275.11(e).)

One area of the rule must be implemented as of the beginning of Fiscal Year 1984 is the disposition of active and negative case reviews with respect to being complete, not complete, or not subject to review (7 CFR 275.12(g) and 275.12(e)). These provisions are required for all cases for all State agencies and may require some reworking of some completed cases. In most instances State agencies should be able to accomplish this work with the material in the quality control case file, with some telephone contact, or with a modest amount of actual field investigation. This work should result in more completed cases and so be to the advantage of the State agency.

Finally, State agencies should note that the new provisions for sample sizes and completion standards are effective as of the beginning of Fiscal Year 1984. This will prevent any conflict between the regulations and waivers granted to some State agencies to reduce their sample sizes according to the provisions of the proposed rule. It also allows State agencies which now want to adjust their sample sizes to do so without delay. This will help those State agencies take advantage of as much of the resulting savings as possible. (See 7 CFR 275.11(b) and (d).)

Correction

The definition of State in § 271.2 is incorrect. The phrase "or as a wholesale food concern" actually belongs with the definition of staple food and was inadvertently added to the definition of State by the April 19, 1983, rule entitled "Food Stamp Program: Termination of the Food Stamp Program in the Commonwealth of Puerto Rico" (48 FR 16832). The phrase is being removed by this action.

Note.—The following paragraphs in 7 CFR which had been amended or revised in accordance with the May 27 interim rules have not changed and are adopted as final in

the form originally set forth in the interim rules:

271.2 definitions of payment error rate, review period, and underissuance error rate § 275.25(d)(2), (d)(3), (d)(4)(ii), (d)(5)(i)(c), E, and (F), and (d)(5)(ii); and § 277.4(b)(5), (b)(6), (b)(7), and (b)(8).

For the convenience of the reader, these unchanged paragraphs (except the paragraph that sets forth the implementation schedule of the proposed rules) are printed below with paragraphs from the interim rule which are being amended or revised by this final action and with paragraphs from the July 29 proposed rule which are being finalized by this action.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs-social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273-

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

7 CFR Part 277

Food stamps, Government procedure, Grant programs—social programs, Investigations, Records, Reporting and recordkeeping requirements.

Therefore, 7 CFR Parts 271, 272, 273, 275, and 277 are being amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

1. In § 271.2, the definition of "State" is amended by removing the phrase "or as a wholesale food concern" from the end of that definition.

2. In § 271.2, the definition of "cumulative allotment error rate" and "administrative deficiencies" are removed; the definitions of "active case," "negative case," and "review period" are revised; and the definitions of "payment error rate," and "underissuance error rate" are adopted as final. They read as follows:

§ 271.2 Definitions.

"Active case" means a household which was certified prior to, or during, the sample month and issued food stamp benefits for the sample month.

"Negative case" means a household which was denied certification or whose food stamp benefits were terminated effective for the sample month.

"Payment error rate" means the sum of the allotments issued to eligible households to which they were not entitled and the allotments issued to ineligible households, expressed as a percentage of all allotments issued to complete active sample cases excluding those cases processed by SSA personnel or participating in certain demonstration projects designated by FNS.

"Review period" means the 12-month period from October 1 of each calendar year through September 30 of the following calendar year.

"Underissuance error rate" means an estimate of the proportion of allotments to which eligible households were entitled but did not receive, expressed as a percentage of all allotments issued to active sample cases.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1, a new paragraph (68) is added to read as follows:

§ 272.1 General terms and conditions.

(g) Implementation. * * *

(68) *Amendment 260.* (i) The quality control review provisions contained in Amendment 260 are effective starting with the beginning of Fiscal Year 1984, except as provided in the following sentences. All cases sampled for the six months October 1983 through March 1984 shall be disposed of and reported within 95 days of March 31, 1984. Cases sampled for April 1984 and for months thereafter shall be disposed of and reported according to § 275.21. For example, 90 percent of April cases are due within 75 days of April 30, and 100 percent are due within 95 days of that date. The structure of sample frames specified in § 275.11(e) must be implemented no later than the sample month of October 1984.

(ii) Starting with the October 1983 sample month, cases must be determined complete, not complete, or not subject to review according to

§§ 275.12(g) and 275.13(e). As of the beginning of Fiscal Year 1984 the sample sizes stated in § 275.11(b) and related sampling plan requirements are effective, and State agencies are required to meet the completion standard stated in § 275.11(d). State agencies currently sampling at the levels provided in § 275.11(b)(1)(iii) must submit to their respective FNS Regional Offices the reliability statement required by § 275.11(a)(2) within 30 days of the publication of this rule, or no later than the second month after publication of this rule begin sampling at the levels specified in § 275.11(b)(1)(iii).

4. In § 272.2, the seventh sentence of paragraph (a)(2) is revised; paragraphs (d)(1)(i) and (ii) are redesignated as paragraphs (d)(1)(ii) and (iii), respectively, and a new paragraph (d)(1)(i) is added; and paragraphs (e)(4) through (6) are redesignated as paragraphs (e)(5) through (7), respectively, and a new paragraph (e)(4) is added. The revision and additions read as follows:

§ 272.2 Plan of operation.

(a) General Purpose and Content.

(2) *Content.* * * * The Plan's attachments include the Quality Control Sample plan, the Disaster Plan (currently reserved), and the optional Nutrition Education Plan. * * *

(d) Planning Documents. (1) * * *

(i) Quality Control Sampling Plan as required by § 275.11 (a)(4);

(e) Submittal Requirements. * * *

(4) The Quality Control Sampling Plan shall be signed by the head of the State agency and submitted to FNS prior to implementation as follows:

(i) According to the timeframes specified in paragraph (e)(4)(ii) of this section, prior to each annual review period each State agency shall submit any changes in their sampling plan for FNS approval or submit a statement that there are no such changes. These submittals shall include the statement required by § 275.11(a)(2), if appropriate. The Quality Control Sampling Plan in effect for each State agency as of the beginning of Fiscal Year 1984 shall be considered submitted and approved for purposes of this section, provided that the State agency has obtained prior FNS approval of its sampling plan.

(ii) Initial submissions of and major changes to sampling plans and changes in sampling plans resulting from general changes in procedure shall be submitted to FNS for approval at least 60 days prior to implementation. Minor changes

to approved sampling plans shall be submitted at least 30 days prior to implementation.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

5. In § 273.2, the text after the title of paragraph (d) is redesignated as paragraph (d)(1), the last two sentences of newly-designated paragraph (d)(1) are revised, and a new paragraph (d)(2) is added. The revisions and additions read as follows:

§ 273.2 Application processing.

(d) *Household cooperation.* (1) * * * The household shall also be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility, including reviews generated by reported changes and applications for recertification. Once denied or terminated for refusal to cooperate, the household may reapply but shall not be determined eligible until it cooperates with the State agency.

(2) In addition, the household shall be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility as a part of a quality control review. If a household is terminated for refusal to cooperate with a quality control reviewer, in accordance with § 275.12(g)(1)(ii), the household may reapply but shall not be determined eligible until it cooperates with the quality control reviewer. If a household reapplies after 95 days from the end of the annual review period, the household shall not be determined ineligible for its refusal to cooperate with a quality control reviewer during the completed review period, but must provide verification of all eligibility requirements prior to being determined eligible.

PART 275—PERFORMANCE REPORTING SYSTEM

6. In § 275.3, paragraph (c) is revised to read as follows:

§ 275.3 Federal monitoring.

(c) *Validation of State Agency Error Rates.* FNS shall validate each State agency's active case error rate, payment error rate, and underissuance error rate, as described in § 275.25(c), during each annual quality control review period. FNS shall validate the State agency's negative case error rate, as described in § 275.25(c), only when the State agency's payment and underissuance error rates for an annual review period appear to

entitle it to an increased share of Federal administrative funding for that period as outlined in § 277.4(b) (2), (5), (6), or (7), and its negative case error rate for that period is less than the national weighted mean negative case error rate applicable to the period of enhanced funding. Any deficiencies detected in a State agency's QC system shall be included in the State agency's corrective action plan. The findings of validation reviews shall be used as outlined in § 275.25(e)(6).

(1) *Active case error rate.* The validation review of each State agency's active case error rate shall consist of the following actions:

(i) FNS will select a subsample of a State agency's completed active cases. The Federal review sample for completed active cases is determined as follows:

State annual active case sample size	Federal annual sample size
1,200 and over	n=400.
300-1,199	n=150 + 0.277 (N-300).
Under 300	n=150

(A) In the above formula, n is the minimum number of Federal review sample cases which must be selected when conducting a validation review.

(B) In the above formula, N is the State agency's minimum active case sample size as determined in accordance with § 275.11(b)(1).

(ii) FNS Regional Offices will conduct case record reviews to the extent necessary to determine the accuracy of the State agency's findings using the household's certification records and the State agency's QC records as the basis of determination. The FNS Regional Office may choose to verify any aspects of a State agency's QC findings through telephone interviews with participants or collateral contacts. In addition, the FNS Regional Office may choose to conduct field investigations to the extent necessary.

(iii) FNS Regional Offices will assist State agencies in completing active cases reported as not complete due to household refusal to cooperate.

(iv) FNS will also review the State agency's sampling procedures, estimation procedures, and the State agency's system for data management to ensure compliance with § 275.11 and § 275.12.

(v) FNS validation reviews of the State agency's active sample cases will be conducted on an ongoing basis as the State agency reports the findings for individual cases and supplies the necessary case records. FNS will begin the remainder of each State agency's

validation review as soon as possible after the State agency has supplied the necessary information regarding its sample and review activity.

(2) *Payment error rate.* The validation review of each State agency's payment error rate shall occur as a result of the Federal validation of the State agency's active case error rate as outlined in paragraph (c)(1) of this section.

(3) *Underissuance error rate.* The validation review of each State agency's underissuance error rate shall occur as a result of the Federal validation of the State agency's active case error rate as outlined in paragraph (c)(1) of this section.

(4) *Negative case error rate.* The validation review of each State agency's negative case error rate shall consist of the following actions:

(i) FNS will select a subsample of a State agency's completed negative cases. The Federal review sample for completed negative cases is determined as follows:

State annual negative case-sample size	Federal annual sample size
800 and over	$n = 160$
150-799	$n = 75 + 0.130 (N-150)$
Under 150	$n = 75$

(A) In the above formula, n is the minimum number of Federal review sample cases which must be selected when conducting a validation review.

(B) In the above formula, N is the State agency's minimum negative case sample size as determined in accordance with § 275.11(b)(2).

(ii) FNS Regional Offices will conduct case record reviews to the extent necessary to determine whether the household case record contained sufficient documentation to justify the State agency's QC findings of the correctness of the State agency's decision to deny or terminate a household's participation.

(iii) FNS will also review each State agency's negative case sampling and review procedures against the provisions of §§ 275.11 and 275.13.

(iv) FNS will begin each State agency's negative sample case validation review as soon as possible after the State agency has supplied the necessary information, including case records and information regarding its sample and review activity.

(5) *Arbitration.* Each FNS Regional Office will appoint an individual to arbitrate disputes between the State agency and the FNS Regional Office concerning individual case findings and the appropriateness of actions taken to dispose of individual cases on a case-by-case basis. This individual will not

be directly involved in the validation effort and will accept questions of certification policy only upon written request by the State agency.

7. In § 275.4, paragraph (c) is revised to read as follows:

§ 275.4 Record retention.

(c) QC review records consist of Forms FNS-380, Worksheet for Integrated AFDC, Food Stamps and Medicaid Quality Control Reviews, FNS-380-1, Integrated Review Schedule, FNS-245, Negative Quality Control Review Schedule, and Form FNS-248, Status of Sample Cases in Reporting Month and Period; other materials supporting the review decision; sample lists; sampling frames; tabulation sheets; and reports of the results of all quality control reviews during each review period.

8. In § 275.10, the fourth, fifth, and sixth sentences of paragraph (a) are revised; and paragraph (b) is revised. The revisions read as follows:

§ 275.10 Scope and purpose.

(a) * * * Reviews of negative cases shall be conducted to determine whether the State agency's decision to deny or terminate the household, as of the review date, was correct. Quality control reviews measure the validity of food stamp cases at a given time (the review date) by reviewing against the Food Stamp Program standards established in the Food Stamp Act and the Regulations, taking into account any FNS authorized waivers to deviate from specific regulatory provisions. FNS and the State agency shall analyze findings of the reviews to determine the incidence and dollar amounts of errors, which will determine the State agency's liability for payment errors and eligibility for enhanced funding in accordance with the Food Stamp Act of 1977, as amended, and to plan corrective action to reduce excessive levels of errors for any State agency with combined payment error and underissuance error rates of 5 percent or more.

(b) The objectives of quality control reviews are to provide:

- (1) A systematic method of measuring the validity of the food stamp caseload;
- (2) A basis for determining error rates;
- (3) A timely continuous flow of information on which to base corrective action at all levels of administration; and
- (4) A basis for establishing State agency liability for errors that exceed

the National standard and State agency eligibility for enhanced funding.

9. Section 275.11 is revised to read as follows:

§ 275.11 Sampling.

(a) *Sampling plan.* Each State agency shall develop a quality control sampling plan which demonstrates the integrity of its sampling procedures.

(1) *Content.* The sampling plan shall include a complete description of the frame, the method of sample selection, and methods for estimating characteristics of the population and their sampling errors. The description of the sample frames shall include: source, availability, accuracy, completeness, components, location, form, frequency of updates, deletion of cases not subject to review, and structure. The description of the methods of sample selection shall include procedures for: estimating caseload size, overpull, computation of sampling intervals and random starts (if any), stratification or clustering (if any), identifying sample cases, correcting over-or undersampling, and monitoring sample selection and assignment. A time schedule for each step in the sampling procedures shall be included. If appropriate, the sampling plan shall include a description of its relationship, to other Federally-mandated quality control samples (e.g., Aid to Families with Dependent Children or Medicaid).

(2) *Criteria.* All sampling plans shall:

- (i) Conform to principles of probability sampling;
- (ii) Document methods for estimating characteristics of the population and their sampling errors;
- (iii) Contain population estimates with the same or better precision as would be obtained by a simple random sample of the size specified in paragraphs (b)(1) and (b)(2) of this section;
- (iv) Describe all weighting procedures and their effects on data analysis and reporting requirements;
- (v) Provide for the maintenance of the current effort in other phases of the quality control process (e.g., case reviews, statistical reports, and data analysis);
- (vi) Specify and explain the basis for the sample sizes chosen by the State agency;
- (vii) Specify and explain the basis for the approximate number of sample cases to be selected each month if other than one-twelfth of the active and negative sample sizes; and
- (viii) If the State agency has chosen an active sample size as specified in paragraph (b)(1)(iii) of this section, include a statement that, whether or not

the sample size is increased to reflect an increase in participation as discussed in paragraph (b)(3) of this section, the State agency will not use the size of the sample chosen as a basis for challenging the resulting error rates.

(3) *Design.* FNS generally recommends a systematic sample design for both active and negative samples because of its relative ease to administer, its validity, and because it yields a sample proportional to variations in the caseload over the course of the annual review period. (To obtain a systematic sample, a State agency would select every k th case after a random start between 1 and k . The value of k is dependent upon the estimated size of the universe and the sample size.) A State agency may, however, develop an alternative sampling design better suited for its particular situation.

(4) *FNS review and approval.* The State agency shall submit its sampling plan to FNS for approval as a part of its State Plan of Operation in accordance with § 272.2(e)(4). In addition, all sampling procedures used by the State agency, including frame composition, construction, and content shall be fully documented and available for review by FNS.

(Approved by the Office of Management and Budget under control number 0584-0303.)

(b) *Sample size.* There are two samples for the food stamp quality control review process, an active case sample and a negative case sample. The size of both these samples is based on the State agency's average monthly caseload during the annual review period. Costs associated with a State agency's sample sizes are reimbursable as specified in § 277.4.

(1) *Active cases.* (i) All active cases shall be selected in accordance with standard procedures, and the review findings shall be included in the calculation of the State agency's payment error and underissuance error rates.

(ii) Unless a State agency chooses to select and review a number of active cases determined by the formulas provided in paragraph (b)(1)(iii) of this section and has included in its sampling plan the reliability certification required by paragraph (a)(2)(viii) of this section, the minimum number of active cases to be selected and reviewed by a State agency during each annual review period shall be determined as follows:

Average monthly active households	Required annual sample size
Under 10,000	$n=300$.

(iii) A State agency which includes in its sampling plan the statement required by paragraph (a)(2)(viii) of this section may determine the minimum number of active cases to be selected and reviewed during each annual review period as follows:

Average monthly active households	Required annual sample size
60,000 and over	$n=1200$.
10,000 to 59,999	$n=300+0.018(N-10,000)$.
Under 10,000	$n=300$.

(iv) In the formulas in paragraphs (b)(1)(ii) and (iii) of this section n is the required active case sample size. This is the minimum number of active cases subject to review which must be selected each review period. Also in the formulas, n is the anticipated average monthly participating caseload subject to quality control review (i.e., households which are included in the active universe defined in paragraph (e)(1) of this section) during the annual review period.

(2) *Negative cases.* The minimum number of negative cases to be selected and reviewed during each annual review period shall be determined as follows:

Average monthly negative households	Required annual sample size
5,000 and over	$n=800$.
500 to 4,999	$n=150+0.144(N-500)$.
Under 500	$n=150$.

(i) In the above formula, n is the required negative sample size. This is the minimum number of negative cases subject to review which must be selected each review period.

(ii) In the above formula, n is the anticipated average monthly number of negative cases which are subject to quality control review (i.e., households which are part of the negative universe defined in paragraph (e)(2) of this section) during the annual review period.

(3) *Unanticipated changes.* Since the average monthly caseloads (both active and negative) must be estimated at the beginning of each annual review period, unanticipated changes can result in the need for adjustments to the sample size. Recognizing the difficulty of forecasting caseloads, State agencies will not be penalized if the actual caseload during a review period is less than 20 percent larger than the estimated caseload used to determine sample size. If the actual

caseload is more than 20 percent larger than the estimated caseload, the larger sample size appropriate for the actual caseload will be used in computing the sample completion rate.

(4) *Alternative designs.* The active and negative sample size determinations assume that State agencies will use a systematic or simple random sample design. State agencies able to obtain results of equivalent reliability with smaller samples and appropriate design may use an alternative design with FNS approval. To receive FNS approval, proposals for alternative designs must provide population estimates with equivalent or better precision than would be obtained had the State agency reviewed simple random samples of the sizes specified by paragraphs (b)(1) and (b)(2) of this section.

(c) *Sample selection.* The selection of cases for quality control review shall be made separately for active and negative cases each month during the annual review period. Each month each State agency shall select for review approximately one-twelfth of its required sample, unless FNS has approved other numbers of cases specified in the sampling plan.

(1) *Substitutions.* Once a household has been identified for inclusion in the sample by a predesigned sampling procedure, substitutions are not acceptable. An active case must be reviewed each time it is selected for the sample. If a household is selected more than once for the negative sample as the result of separate and distinct instances of denial or termination, it shall be reviewed each time.

(2) *Corrections.* Excessive undersampling must be corrected during the annual review period. Excessive oversampling may be corrected at the State agency's option. Cases which are dropped to compensate for oversampling shall be reported as not subject to review. Because corrections must not bias the sample results, cases which are dropped to compensate for oversampling must comprise a random subsample of all cases selected (including those completed, not completed, and not subject to review). Cases which are added to the sample to compensate for undersampling must be randomly selected from the entire frame in accordance with the procedures specified in paragraphs (b), (c)(1), and (e) of this section. All sample adjustments must be fully documented and available for review by FNS.

(d) *Required sample size.* A State agency's required sample size is the larger of either the number of cases selected which are subject to review or

Average monthly active households	Required annual sample size
60,000 and over	$n=2400$.
10,000 to 59,999	$n=300+0.042(N-10,000)$.

the number of cases chosen for selection and review according to paragraph (b) of this section.

(e) *Sample frame.* The State agency shall select cases for quality control review from a sample frame. The choice of a sampling frame shall depend upon the criteria of timeliness, completeness, accuracy, and administrative burden. Complete coverage of the sample universes, as defined in paragraph (f) of this section, must be assured so that every household subject to quality control review has an equal or known chance of being selected in the sample. Since the food stamp quality control review process requires an active and negative sample, two corresponding sample frames are also required.

(1) *Active cases.* The frame for active cases shall list all households which were: (i) certified prior to, or during, the sample month; and (ii) issued benefits for the sample month, except for those households excluded from the universe in paragraph (f)(1) of this section. State agencies may elect to use either a list of certified eligible households or a list of households issued an allotment. If the State agency uses a list of certified eligible households, those households which are issued benefits for the sample month after the frame has been compiled shall be included in a supplemental list. If the State agency uses an issuance list, the State agency shall ensure that the list includes those households which do not actually receive an allotment because the entire amount is recovered for repayment of an overissuance in accordance with the allotment reduction procedures in § 273.18.

(2) *Negative cases.* The frame for negative cases shall list all households whose application for food stamps was denied or whose certification was terminated effective for the sample month except those excluded from the universe in paragraph (f)(2) of this section.

(3) *Unwanted cases.* A frame may include cases for which information is not desired (e.g., households which have been certified but did not actually participate during the sample month). When such cases cannot be eliminated from the frame beforehand and are selected for a sample, they must be accounted for and reported as being not subject to review in accordance with the provisions in §§ 275.12(g) and 275.13(e).

(f) *Sample universe.* The State agency shall ensure that its active and negative case frames accurately reflect their sample universes. There are two sample universes for the food stamp quality control review process, an active case universe and a negative case universe.

The exceptions noted below for both universes are households not usually amenable to quality control review.

(1) *Active cases.* The universe for active cases shall include all households certified prior to, or during, the sample month and receiving food stamps for the sample month, except for the following:

(i) A household in which all the members had died or had moved out of the State before the review could be undertaken or completed;

(ii) A household receiving food stamps under a disaster certification authorized by FNS;

(iii) A household which is under investigation for intentional Program violation, including a household with a pending administrative disqualification hearing;

(iv) A household appealing an adverse action when the review date falls within the time period covered by continued participation pending the hearing; or

(v) A household receiving restored benefits in accordance with § 273.17 but not participating based upon an approved application. Other households excluded from the active case universe during the review process are identified in § 275.12(g).

(2) *Negative cases.* The universe for negative cases shall include all households whose application for food stamps was denied or whose certification was terminated effective for the sample month except the following:

(i) A household which had its case closed due to expiration of the certification period;

(ii) A household which withdrew an application prior to the agency's determination;

(iii) A household which is under investigation for intentional Program violation;

(iv) A household in which all members had died or had moved out of State at the time of the review (except those negative cases in which the reason for denial or termination is that all household members died or moved out of State). Other households excluded from the negative case universe during the review process are identified in § 275.13(e). The negative case universe shall not include negative actions taken against the household which do not result in the household actually being denied or terminated.

(g) *Demonstration projects/SSA processing.* Households correctly classified for participation under the rules of an FNS-authorized demonstration project which FNS determines to significantly modify the rules for determining households' eligibility or allotment level, and

households participating based upon an application processed by Social Security Administration personnel shall be included in the selection and review process. They shall be included in the universe for calculating sample sizes and included in the sample frames for sample selection as specified in paragraphs (b) through (e) of this section. In addition, they shall be included in the quality control review reports as specified in § 275.21(e) and included in the calculation of a State agency's completion rate as specified in § 275.25(e)(6). However, all results of reviews of active and negative demonstration project/SSA processed cases shall be excluded from the determination of State agencies' active and negative case error rates, payment error rates, and underissuance error rates as described in § 275.25(c). The review of these cases shall be conducted in accordance with the provisions specified in §§ 275.12(h) and 275.13(f).

10. Section 275.12 is revised to read as follows:

§ 275.12 Review of active cases.

(a) *General.* A sample of households which were certified prior to, or during, the sample month and issued food stamp benefits for the sample month shall be selected for quality control review. These active cases shall be reviewed to determine if the household is eligible and, if eligible, whether the household is receiving the correct allotment. The determination of a household's eligibility shall be based on an examination and verification of all elements of eligibility (i.e., basic program requirements, resources, income, and deductions). The elements of eligibility are specified in §§ 273.1 and 273.3 through 273.9. The verified circumstances and the resulting benefit level determined by the quality control review shall be compared to the benefits authorized by the State agency as of the review date. When changes in household circumstances occur, the reviewer shall determine whether the changes were reported by the participant and handled by the agency in accordance with the rules set forth in §§ 273.12, 273.13 and 273.21, as appropriate. For active cases, the review date shall always fall within the sample month, either the first day of a calendar or fiscal month or the day of certification, whichever is later. The review of active cases shall include: a household case record review; a field investigation, except as provided in paragraph (b) of this section; the identification of any variances; an error

analysis; and the reporting of review findings

(b) *Household case record review.* The reviewer shall examine the household case record to identify the specific facts relating to the household's eligibility and basis of issuance. If the reviewer is unable to locate the household case record, the reviewer shall identify as many of the pertinent facts as possible from the household issuance record. The case record review shall include all information applicable to the case as of the review month, including the application and worksheet in effect as of the review date. Documentation contained in the case record can be used as verification if it is not subject to change and applies to the sample month. If during the case record review the reviewer can determine and verify the household's ineligibility the review can be terminated at that point, provided that if the determination is based on information not obtained from the household then the correctness of that information must be confirmed as provided in paragraph (c)(2) of this section. The reviewer shall utilize information obtained through the case record review to complete column (2) of the Integrated Worksheet, Form FNS-380, and to tentatively plan the content of the field investigation.

(c) *Field investigation.* A full field investigation shall be conducted for all active cases selected in the sample month except as provided in paragraph (b) of this section. If during the field investigation the reviewer determines and verifies the household's ineligibility, the review can be terminated at that point, provided that if the determination is based on information not obtained from the household then the correctness of that information must be confirmed as provided in paragraph (c)(2) of this section. In Alaska an exception to this requirement can be made in those isolated areas not reachable by regularly scheduled commercial air service, automobile, or other public transportation provided one fully documented attempt to contact the household has been made. Such cases may be completed through casefile review and collateral contact. The field investigation will include interviews with the head of household, spouse, or authorized representative; contact with collateral sources of information; and any other materials and activity pertinent to the review of the case. The scope of the review shall not extend beyond the examination of household circumstances which directly relate to the determination of household eligibility and basis of issuance status.

The reviewer shall utilize information obtained through the field investigation to complete column (3) of the Integrated Worksheet, Form FNS-380.

(1) *Personal interviews.* Personal interviews shall be conducted in a manner that respects the rights, privacy, and dignity of the participants. Prior to making a home visit, the reviewer shall notify the household that it has been selected, as part of an ongoing review process, for review by quality control and that a home visit will be made in the future. The method of notifying the household and the specificity of the notification shall be determined by the State agency, in accordance with applicable State and Federal laws. Most interviews will be held in the home; however, interviews can be held elsewhere when circumstances warrant. Under no circumstances shall the interview with the household be conducted by phone, except in Alaska when an exception to the field investigation is made in accordance with this section. During the interview with the participant, the reviewer shall:

- (i) Explore with the head of the household, spouse, authorized representative, or any other responsible household member, household circumstances as they affect each factor of eligibility and basis of issuance;
- (ii) Establish the composition of the household;
- (iii) Review the documentary evidence in the household's possession and secure information about collateral sources of verification; and

(iv) Elicit from the participant names of collateral contacts. The reviewer shall use, but not be limited to, these designated collateral contacts. If required by the State, the reviewer shall obtain consent from the head of the household to secure collateral information. If the participant refuses to sign the release of information form, the reviewer shall explain fully the consequences of this refusal to cooperate (as contained in paragraph (g)(1)(ii) of this section), and continue the review to the fullest extent possible.

(2) *Collateral contacts.* The reviewer shall obtain verification from collateral contacts in all instances when adequate documentation was not available from the participant. This second party verification shall cover each element of eligibility as it affects the household's eligibility and coupon allotment. The reviewer shall make every effort to use the most reliable second party verification available (for example, banks, payroll listings, etc.), in accordance with FNS guidelines, and shall thoroughly document all

verification obtained. If any information obtained by the QC reviewer differs from that given by the participant, then the reviewer shall resolve the differences to determine which information is correct before an error determination is made. The manner in which the conflicting information is resolved shall include recontacting the participant unless the participant cannot be reached. When resolving conflicting information reviewers shall use their best judgement based on the most reliable data available and shall document how the differences were resolved.

(d) *Variance identification.* The reviewer shall identify any element of a basic program requirement or the basis of issuance which varies (i.e., information from review findings which indicates that policy was applied incorrectly and/or information verified as of the review date that differs from that used at the most recent certification action). For each element that varies, the reviewer shall determine whether the variance was State agency or participant caused. The results of these determinations shall be coded and recorded in column (5) of the Integrated Worksheet, Form FNS-380.

(1) *Variances included in error analysis.* Except for those variances in an element resulting from one of the situations described in paragraph (d)(2) of this section, any variance involving an element of eligibility or basis of issuance shall be included in the error analysis. Such variances shall include but not be limited to those resulting from a State agency's failure to take the disqualification action related to SSN's specified in § 273.6(c), and related to work requirements, specified in § 273.7(g).

(2) *Variances excluded from error analysis.* The following variances shall be excluded from the determination of a household's eligibility and basis of issuance for the sample month:

- (i) Any variance resulting from the nonverified portion of a household's gross nonexempt income where there is conclusive documentation (a listing of what attempts were made to verify and why they were unsuccessful) that such income could not be verified at the time of certification because the source of income would not cooperate in providing verification and no other sources of verification were available. If there is no conclusive documentation as explained above, then the reviewer shall not exclude any resulting variance from the error determination. This follows certification policy outlined in § 273.2(f)(1)(i).

(ii) Any variance in cases certified under expedited certification procedures resulting from postponed verification of an element of eligibility as allowed under § 273.2(i)(4)(i). Verification of gross income, deductions, resources, household composition, alien status, or tax dependency may be postponed for cases eligible for expedited certification. However, if a case certified under expedited procedures contains a variance as a result of a residency deficiency, a mistake in the basis of issuance computation, a mistake in participant identification, or incorrect expedited income accounting, the variance shall be included in the error determination. This exclusion shall only apply to those cases which are selected for QC review in the first month of participation under expedited certification.

(iii) Any variance subsequent to certification in an element of eligibility or basis of issuance which was not reported and was not required to have been reported as of the review date. The elements participants are required to report and the time requirements for reporting are specified in §§ 273.12(a) and 273.21(h) and (i), as appropriate. If, however, a change in any element is reported, and the State agency fails to act in accordance with §§ 273.12(c) and 273.21(j), as appropriate, any resulting variance shall be included in the error determination.

(iv) Any variance in deductible expenses which was not provided for in determining a household's benefit level in accordance with § 273.2(f)(3)(i)(B). This provision allows households to have their benefit level determined without providing for a claimed expense when the expense is questionable and obtaining verification may delay certification. If such a household subsequently provides the needed verification for the claimed expense and the State agency does not redetermine the household's benefits in accordance with § 273.12(c), any resulting variance shall be included in the error determination.

(3) *Other Findings.* Findings other than variances made during the review which are pertinent to the food stamp household or the case record may be acted on at the discretion of the State agency. Examples of such findings are: an incorrect age of a household member which is unrelated to an element of eligibility; an overdue subsequent certification; no current application on file; insufficient documentation; incorrect application of the verification requirements specified in Part 273; and deficiencies in work registration

procedural requirements. Such deficiencies include: inadequate documentation of each household member's exempt status; work registration form for each nonexempt household member not completed at the time of application and every six months thereafter; and the household not advised of its responsibility to report any changes in the exempt status of any household member.

(e) *Error analysis.* The reviewer shall analyze all appropriate variances in completed cases, in accordance with paragraph (d) of this section, which are based upon verified information and determine whether such cases are either eligible, eligible with a basis of issuance error, or ineligible. The review of an active case determined ineligible shall be considered completed at the point of the ineligibility determination. For households determined eligible, the review shall be completed to the point where the correctness of the basis of issuance is determined, except in the situations outlined in paragraph (g) of this section. In the event that a review is conducted of a household which is receiving restored or retroactive benefits for the sample month, the portion of the allotment which is the restored or retroactive benefit shall be excluded from the determination of the household's eligibility and/or basis of issuance. A food stamp case in which a household member(s) receives public assistance shall be reviewed in the same manner as all other food stamp cases, using income as received. The determination of a household's eligibility and the correctness of the basis of issuance shall be determined based on data entered on the computation sheet as well as other information documented on other portions of the Integrated Worksheet, Form FNS-380, as appropriate.

(f) *Reporting of review findings.* All information verified to be incorrect during the review of an active case shall be reported to the State agency for appropriate action on an individual case basis. This includes information on all variances in elements of eligibility and basis of issuance in both error and nonerror cases. In addition, the reviewer shall report the review findings on the Integrated Review Schedule, Form FNS-380-1, in accordance with the following procedures:

(1) *Eligibility errors.* If the reviewer determines that a case is ineligible, the occurrence and the total allotment issued in the sample month shall be coded and reported. Whenever a case contains a variance in an element which results in an ineligibility determination

and there are also variances in elements which would cause a basis of issuance error, the case shall be treated as an eligibility error. The reviewer shall also code and report any variances that directly contributed to the error determination. In addition, if the State agency has chosen to report information on all variances in elements of eligibility and basis of issuance, the reviewer shall code and report any other such variances which were discovered and verified during the course of the review.

(2) *Basis of issuance errors.* If the reviewer determines that food stamp allotments were either overissued or underissued to eligible households in the sample month, in an amount exceeding \$5.00, the occurrence and the amount of the error shall be coded and reported. The reviewer shall also code and report any variances that directly contributed to the error determination. In addition, if the State agency has chosen to report information on all variances in elements of eligibility and basis of issuance, the reviewer shall code and report any other such variances which were discovered and verified during the course of the review.

(g) *Disposition of case reviews.* Each case selected in the sample of active cases must be accounted for by classifying it as completed, not completed, or not subject to review. These case dispositions shall be coded and recorded on the Integrated Review Schedule, Form FNS-380-1.

(1) *Cases reported as not complete.* Active cases shall be reported as not completed if the household case record cannot be located and the household itself is not subsequently located; if the household case record is located but the household cannot be located unless the reviewer attempts to locate the household as specified in this paragraph; or if the household refuses to cooperate, as discussed in this paragraph. All cases reported as not complete shall be reported to the State agency for appropriate action on an individual case basis. Without FNS approval, no active case shall be reported as not completed solely because the State agency was unable to process the case review in time for it to be reported in accordance with the timeframes specified in § 275.21(b)(2).

(i) If the reviewer is unable to locate the participant either at the address indicated in the case record or in the issuance record and the State agency is not otherwise aware of the participant's current address, the reviewer shall attempt to locate the household by contacting at least two sources which the State agency determines are most

likely to be able to inform the reviewer of the household's current address. Such sources include but are not limited to:

(A) The local office of the U.S. Postal Service;

(B) The State Motor Vehicle Department;

(C) The owner or property manager of the residence at the address in the case record; and

(D) Any other appropriate sources based on information contained in the case record, such as public utility companies, telephone company, employers, or relatives. Once the reviewer has attempted to locate the household and has documented the response of each source contacted, if the household still cannot be located and the State agency has documented evidence that the household did actually exist, the State agency shall report the active case as not subject to review. In these situations documented evidence shall be considered adequate if it either documents two different elements of eligibility or basis of issuance, such as a copy of a birth certificate for age and pay status for income; or documents the statement of a collateral contact indicating that the household did exist. FNS Regional Offices will monitor the results of the contacts which State agencies make in attempting to locate households.

(ii) If a household refuses to cooperate with the quality control reviewer and the State agency has taken other administrative steps to obtain that cooperation without obtaining it, the household shall be notified of the penalties for refusing to cooperate with respect to termination and reapplication, and of the possibility that its case will be referred for investigation for willful misrepresentation. If a household refuses to cooperate after such notice, the reviewer may attempt to complete the case and shall report the household's refusal to the State agency for termination of its participation without regard for the outcome of that attempt. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the quality control review process. In certain circumstances, the household may demonstrate that it is unwilling to cooperate by not taking actions after having been given every reasonable opportunity to do so, even though the household or its members do not state that the household refuses to cooperate. Instances where the household's unwillingness to cooperate in completing a quality control review has

the effect of a refusal to cooperate shall include the following:

(A) The household does not respond to a letter from the reviewer sent Certified Mail-Return Receipt Requested within 30 days of the date of receipt;

(B) The household does not attend an agreed upon interview with the reviewer and then does not contact the reviewer within 10 days of the date of the scheduled interview to reschedule the interview; or

(C) The household does not return a signed release of information statement to the reviewer within 10 days of either agreeing to do so or receiving a request from the reviewer sent Certified Mail-Return Receipt Requested. However, in these and other situations, if there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be reported to the State agency for termination.

(2) *Cases not subject to review.* Cases which are not subject to review, if they have not been eliminated in the sampling process, shall be eliminated during the review process. These cases shall be as follows:

(i) Death of all members of a household if they died before the review could be undertaken or completed;

(ii) The household moved out of State before the review could be undertaken or completed;

(iii) The household, at the time of the review, is under active investigation for intentional Food Stamp Program violation, including a household with a pending administrative disqualification hearing;

(iv) A household receiving restored benefits in accordance with § 273.17 but not participating based upon an approved application for the sample month;

(v) A household dropped as a result of correction for oversampling;

(vi) A household participating under disaster certification authorized by FNS for a natural disaster;

(vii) A case incorrectly listed in the active frame;

(viii) A household appealing an adverse action when the review date falls within the time period covered by continued participation pending the hearing;

(ix) A household that did not receive benefits for the sample month; or

(x) A household that still cannot be located after the reviewer has attempted to locate it in accordance with paragraph (g)(1)(i) of this section.

(h) *Demonstration projects/SSA processing.* Households correctly classified for participation under the rules of a demonstration project which

establishes new FNS-authorized eligibility criteria or modifies the rules for determining households' eligibility or allotment level shall be reviewed following standard procedures provided that FNS does not modify these procedures to reflect modifications in the treatment of elements of eligibility or basis of issuance in the case of a demonstration project. If FNS determines that information obtained from these cases would not be useful, then they may be excluded from review. A household whose most recent application for participation was processed by Social Security Administration personnel shall be reviewed following standard procedures. This includes applications for recertification, provided such an application is processed by the SSA as allowed in § 273.2(k)(2)(ii).

11. Section 275.13 is revised to read as follows:

§ 275.13 Review of negative cases.

(a) *General.* A sample of households denied certification to receive food stamps or which had their participation in the Food Stamp Program terminated during a certification period effective for the sample month shall be selected for quality control review. These negative cases shall be reviewed to determine whether the State agency's decision to deny or terminate the household, as of the review date, was correct. For negative cases, the review date shall be the date of the agency's decision to deny or terminate program benefits. The review of negative cases shall include a household case record review; an error analysis; and the reporting of review findings.

(b) *Household case record review.* The reviewer shall examine the household case record and verify through documentation in it whether the reason given for the denial or termination is correct or whether the denial or termination is correct for any other reason documented in the casefile. When the case record alone does not prove ineligibility, the reviewer may attempt to verify the element(s) of eligibility in question by telephoning either the household and/or a collateral contact(s). Through the review of the household case record, the reviewer shall complete the household case record sections and document the reasons for denial or termination on the Negative Quality Control Review Schedule, Form FNS-245.

(c) *Error analysis.* A negative case shall be considered correct if the reviewer is able to verify through documentation in the household case

record or collateral contact that a household was correctly denied or terminated from the program. Whenever the reviewer is unable to verify the correctness of the State agency's decision to deny or terminate a household's participation through such documentation or collateral contact, the negative case shall be considered incorrect.

(d) *Reporting of review findings.* When a negative case is incorrect, this information shall be reported to the State agency for appropriate action on an individual case basis, such as recomputation of the coupon allotment and restoration of lost benefits. In addition, the reviewer shall code and record the error determination on the Negative Quality Control Review Schedule, Form FNS-245.

(e) *Disposition of case review.* Each case selected in the sample of negative cases must be accounted for by classifying it as completed, not completed, or not subject to review. These case dispositions shall be coded and recorded on the Negative Quality Control Review Schedule, Form FNS-245.

(1) Negative cases shall be reported as not completed if the reviewer, after all reasonable efforts, is unable to locate the case record. In no event, however, shall any negative case be reported as not completed solely because the State agency was unable to process the case review in time for it to be reported in accordance with the timeframes specified in § 275.21(b)(2), without prior FNS approval. This information shall be reported to the State agency for appropriate action on an individual case basis.

(2) Negative cases shall be reported as not subject to review when the household, at the time of the review:

(i) Withdrew an application prior to the State agency's determination;

(ii) Is under active investigation for intentional Food Stamp Program violation;

(iii) Had its case closed due to expiration of the certification period; or

(iv) Was dropped as a result of correction for oversampling.

(f) *Demonstration projects/SSA processing.* A household whose application has been denied or whose participation has been terminated under the rules of an FNS-authorized demonstration project shall be reviewed following standard procedures unless FNS provides modified procedures to reflect the rules of the demonstration project. If FNS determines that information obtained from these cases would not be useful, then these cases may be excluded from review. A

household whose application has been processed by SSA personnel and is subsequently denied participation shall be reviewed following standard procedures.

12. Section 275.14 is revised to read as follows:

§ 275.14 Review processing.

(a) *General.* Each State agency shall use FNS handbooks, worksheets, and schedules in the quality control review process. Deviations may be granted from FNS-designed materials under the conditions in § 273.2(b).

(b) *Handbooks.* The reviewer shall follow the procedures outlined in the Quality Control Review Handbook, FNS Handbook 310, to conduct quality control reviews. In addition, the sample of active and negative cases shall be selected in accordance with the sampling techniques described in the Quality Control Sampling Handbook, FNS Handbook 311.

(c) *Worksheets.* The Integrated Review Worksheet, Form FNS-380, shall be used by the reviewer to record required information from the case record, plan and conduct the field investigation, and record findings which contribute to the determination of eligibility and basis of issuance in the review of active cases. In some instances, reviewers may need to supplement Form FNS-380 with other forms. The State forms for appointments, interoffice communications, release of information, etc., should be used when appropriate.

(d) *Schedules.* Decisions reached by the reviewer in active case reviews shall be coded and recorded on the Integrated Review Schedule, Form FNS-380-1. Such active case review findings must be substantiated by information recorded on the Integrated Review Worksheet, Form FNS-380. In negative case reviews, the review findings shall be coded and recorded on the Negative Quality Control Review Schedule, Form FNS-245, and supplemented as necessary with other documentation substantiating the findings.

(Approved by the Office of Management and Budget under control number 0584-0074.)

13. Section 275.21 is revised to read as follows:

§ 275.21 Quality control review reports.

(a) *General.* Each State agency shall submit reports on the performance of quality control reviews in accordance with the requirements outlined in this section. These reports are designed to enable FNS to monitor the State agency's compliance with Program requirements relative to the Quality

Control Review System. Every case selected for review during the sample month must be accounted for and reflected in the appropriate report(s).

(b) *Individual cases.* The State agency shall report the review findings on each case selected for review during the sample month. For active cases, the State agency shall submit the edited findings of the Integrated Review Schedule, Form FNS-380-1. For negative cases, the State agency shall submit a summary report which is produced from the edited findings on individual cases which are coded on the Negative Quality Control Review Schedule, Form FNS-245. The review findings shall be reported as follows:

(1) The State agency shall input and edit the results of each active and negative case into the FNS supplied computer terminal and transmit the data to the host computer. For State agencies that do not have FNS supplied terminals, the State agency shall submit the results of each QC review in a format specified by FNS. Upon State agency request, FNS will consider approval of a change in the review results after they have been reported to FNS.

(2) The State agency shall dispose of and report the findings of 90 percent of all cases selected in a given sample month so that they are received by FNS within 75 days of the end of the sample month. All cases selected in a sample month shall be disposed of and the findings reported so that they are received by FNS within 95 days of the end of the sample month.

(3) The State agency shall supply the FNS Regional Office with individual household case records and the pertinent information contained in the individual case records, or legible copies of that material, as well as legible hard copies of individual Forms FNS-380, FNS-380-1, and FNS-245 or other FNS-approved report forms, within 10 days of receipt of a request for such information.

(4) For each case that remains pending 95 days after the end of the sample month, the State agency shall immediately submit a report that includes an explanation of why the case has not been disposed of, documentation describing the progress of the review to date, and the date by which it will be completed. If FNS determines that the above report does not sufficiently justify the case's pending status, the case shall be considered overdue. Depending upon the number of overdue cases, FNS may find the State agency's QC system to be inefficient or ineffective and suspend and/or disallow the State agency's Federal share of

administrative funds in accordance with the provisions of § 276.4.

(c) *Monthly status.* The State agency shall report the monthly progress of sample selection and completion on the Form FNS-248, Status of Sample Selection and Completion or other format specified by FNS. This report shall be submitted to FNS so that it is received no later than 95 days after the end of the sample month. Each report shall reflect sampling and review activity for a given sample month.

(d) *Annual results.* The State agency shall annually report the results of all quality control reviews during the review period. For this report, the State agency shall submit the edited results of all QC reviews on the Form FNS-247, Statistical Summary of Sample Distribution or other format specified by FNS. This report shall be submitted to FNS so that it is received no later than 95 days from the end of the annual review period. Every case selected in the active or negative sample must be accounted for and reported to FNS, including cases not subject to review, not completed, and completed.

(e) *Demonstration projects/SSA processing.* The State agency shall identify the monthly status of active and negative demonstration project/SSA processed cases (i.e., those cases described in § 275.11(f)) on the Form FNS-248, described in paragraph (c) of this section. In addition, the State agency shall identify the annual results of such cases on the Form FNS-247, described in paragraph (d) of this section.

(Approved by the Office of Management and Budget under control numbers 0584-0034 -0074, and -0299.)

14. In § 275.25, paragraphs (c) and (d) are redesignated as paragraphs (d) and (e), respectively; a new paragraph (c) is added; newly redesignated paragraph (d) is revised; newly redesignated paragraphs (e)(1), (e)(2), (e)(3), (e)(4)(ii), (e)(5)(i)(C), (E) and (F), (e)(5)(ii) and (e)(6) are revised. The addition and revisions read as follows:

§ 275.25 Determination of State agency program performance.

(c) *State agency error rates.* FNS shall estimate each State agency's error rates based on the results of quality control review reports submitted in accordance with the requirements outlined in § 275.21. The State agency's active case error, payment error, underissuance error, and negative case error rates shall be estimated as follows:

(1) *Active case error rate.* The active case error rate shall include the

proportion of active sample cases which were reported as ineligible or as receiving an incorrect allotment (as described in § 275.12(e)) based upon certification policy as set forth in Part 273.

(2) *Payment error rate.* The payment error rate shall include the value of the allotments reported as overissued, including overissuances in ineligible cases, for those cases included in the active case error rate.

(3) *Underissuance error rate.* The underissuance error rate shall include the value of the allotments reported as underissued for those cases included in the active case error rate.

(4) *Negative case error rate.* The negative case error rate shall be the proportion of negative sample cases which were reported as having been eligible at the time of denial or termination (as described in § 275.13(c)) based upon certification policy as set forth in Part 273.

(5) *Demonstration projects/SSA processing.* The reported results of reviews of active and negative demonstration project/SSA processed cases, as described in § 275.11(f), shall be excluded from the estimate of the active case error rate, payment error rate, underissuance error rate, and negative case error rate.

(d) *Federal enhanced funding.* (1) Before making enhanced funding available to a State agency, as described in § 277.4(b), FNS will:

(i) Validate the State agency's estimated active case error rate, payment error rate, underissuance error rate, and negative case error rate, as provided for in § 275.3(c);

(ii) Ensure that the sampling techniques used by the State agency are FNS-approved procedures, as established in § 275.11; and

(iii) Validate the State agency's quality control completion rate to ensure that all of the minimum required sample cases, of both active and negative quality control samples, have been completed. This completion standard is applied separately to the active and negative case samples, and the State agency's estimated payment and underissuance error rates will be adjusted separately, if necessary, to account for those required cases not completed, in accordance with the procedures described in paragraph (e)(6)(iii) of this section for adjustment of the payment error rate.

(2) After validation and any necessary adjustment of estimated error rates, a State agency with a combined official payment error rate and underissuance error rate of five percent or less for an annual review period shall be eligible

for a 60 percent Federally funded share of administrative costs, provided that the State agency's official negative case error rate for that period is less than the national weighted mean negative case error rate applicable to the period of enhanced funding.

(3) State agencies entitled to enhanced funding shall receive the additional funding on a retroactive basis only for the review period in which their error rates are less than the levels described in paragraph (d)(2) of this section.

(e) *State agencies' liabilities for payment error rates.* (1) At the end of each fiscal year, each State agency's payment error rate over the entire fiscal year will be computed, as described in paragraph (e)(6) of this section, and evaluated to determine whether the payment error rate goals established in the following paragraphs have been met.

(2) *Establishment of Payment Error Rate Goals.* (i) Each State agency's payment error rate goal for Fiscal Year 1983 shall be nine percent. Each State agency's payment error rate goal for Fiscal Year 1984 shall be seven percent. Each State agency's payment error rate goal for Fiscal Year 1985, and each fiscal year thereafter, shall be five percent. State agencies' payment error rates for any fiscal year shall be derived from the review period corresponding to the fiscal year.

(ii) If a State agency fails to achieve a nine percent payment error rate in Fiscal Year 1983 but reduces its payment error rate for Fiscal Year 1983 by 33.3 percent (or more) of the difference between its payment error rate during the period of October 1980 through March 1981 and a five percent payment error rate, the State agency shall bear no fiscal liability for its payment error rate. If a State agency fails to achieve a seven percent payment error rate in Fiscal Year 1984, but reduces its payment error rate for Fiscal Year 1984 by 66.7 percent (or more) of the difference between its payment error rate during the period of October 1980 through March 1981 and a five percent payment error rate, the State agency shall bear no fiscal liability for its payment error rate.

(iii) State agencies' payment error rates shall be rounded to the nearest one hundredth of a percent with .005 and above being rounded up to the next highest one-hundredth and .004 and below being rounded to the next lowest one-hundredth.

(3) *State Agencies Failing to Achieve Payment Error Rate Goals.* Each State agency which fails to achieve its payment error rate goal during a fiscal year shall be liable as specified in the following paragraphs.

(i) For every percentage point, or fraction thereof, by which a State agency's payment error rate exceeds the goal for a fiscal year, FNS shall reduce the money it pays for the State agency's Food Stamp Program administrative costs by five percent for that fiscal year; provided that for every percentage point, or fraction thereof, by which a State agency's payment error rate exceeds its goal by more than three percentage points, FNS shall reduce the Federally funded share of Food Stamp Program administrative costs by ten percent for the applicable fiscal year. Thus, if a State agency's reported error rate in Fiscal Year 1983 is 10.5 percent, its Federal administrative funding could be reduced by ten percent. A 13.1 percent error rate, or 4.1 percentage points above the goal, would result in a reduction of 5 percent for each of the three first points, 10 percent for the fourth point and another 10 percent for the fraction above 4 percentage points. This would amount to a 35 percent reduction in Federal administrative funds unless the provisions of paragraph (e)(3)(ii) are applicable to the State agency's circumstances.

(ii) If a State agency fails to reach its payment error rate goal but reduces its error rate as explained in paragraph (e)(2)(ii) for a given fiscal year it will bear no liability for its error rates. If, however, a State agency fails to reach the established goal and fails to meet the reduction percentage for Fiscal Year 1983 and/or 1984, its Federally funded share of program administrative costs shall be reduced by five percent for every percentage point, or fraction thereof, (with a 10 percent reduction applied for every percentage point or fraction above 3 percentage points) by which its error rate exceeds the payment error rate it would have achieved had it met the 33.3 or 66.7 percent reduction percentage for the applicable fiscal year. Thus, if a State agency's payment error rate during the October through March 1981 period was 13 percent and its error rate for Fiscal Year 1983 is 11 percent, it will have failed to achieve a 33.3 percent reduction $(13 - (13 - 5)(33.3) = 10.34$ percent), i.e., the rate the State agency would have achieved had it met the reduction percentage) and incurred a liability equal to five percent of its Federal administrative funding. If the State agency's payment error rate increased to 13 percent in Fiscal Year 1984, it will have missed a 66.7 percent reduction by 5.34 percentage points $(13 - (13 - 5)(66.7) = 7.66$ percent) and

incurred a liability equal to 45 percent of its Federal administrative funding. In the latter example, the 45 percent funding reduction results from a 15 percent reduction for the first three percentage points and 30 percent for the additional 2.34 percentage points by which the State agency exceeded a 7.66 percent error rate.

(iii) If a State agency is found liable for an excessive payment error rate, the amount of liability will be calculated by: (A) Multiplying the percent the Federal share is to be reduced by the base Federal reimbursement rate of 50 percent; (B) subtracting the product of (A) from 50 percent; and (C) multiplying the result of (B) by the State agency's costs covered under the base Federal reimbursement rate for the fiscal year in which the State agency incurred the liability. For example, if the total administrative costs (State and Federal) in a State agency are \$4,000,000 for the fiscal year, and the State agency's Federal funding is to be reduced by 25 percent, the State agency would be reimbursed at a rate of 37.5 percent (i.e., 50 percent minus 25 percent times 50 percent) or \$1,500,000. The State agency's liability would be \$500,000 or 12.5 percent of its administrative costs.

(iv) A State's Federally funded share of administrative costs shall not be reduced by an amount that exceeds the difference between its payment error rate goal (or what its error rate would have been had it met the reduction criteria of paragraph (ii) above) and its actual error rates expressed as a percentage of its total issuance during the fiscal year. Therefore, if the State agency in the above example issued \$10,000,000 in food stamps in the fiscal year and exceeded its goal by four percentage points (as demonstrated by a 25 percent reduction in Federal funding), the State agency's liability would be capped at \$400,000 $((.04)(10,000,000))$, even though the calculation based upon administrative funds would result in a liability of \$500,000.

(4) Relationship to Warning Process and Disallowance of Funds.

(i) FNS may reduce a State agency's share of Federal administrative funding under the provisions of this section or disallow administrative funds under the provisions of § 276.4(c). If a State agency's administrative funding is reduced under the provisions of this section and a portion is also disallowed under § 276.4(c), FNS shall adjust the billing if the disallowance is based upon noncompliance with a program requirement that would constitute a

dollar loss reflected in the State agency's payment error rate to the extent that the disallowance and reduction are for the same deficiency and period of time. This adjustment shall ensure that a State agency is not doubled-billed for the same deficiency in its administration of the program. It shall be each State agency's responsibility to demonstrate the need for any adjustments.

(5) Good Cause and Appeals.

(i) * * *

(C) Significant caseload growth prior to or during a fiscal year of, for example, 15 percent;

* * *

(E) Misapplication of Federal policy where such misapplication directly affects the State's QC error rates and was incorrectly provided or approved by an FNS representative who is reasonably believed to have the necessary authority; and

(F) Other circumstances beyond the control of the State.

(ii) If FNS determines that there was good cause for all or part of a State agency's error rate to exceed its goal in a fiscal year, FNS shall reduce or eliminate the State agency's liability as appropriate.

* * *

(6) Determination of payment error rates. As specified in § 275.3(c), FNS will validate each State agency's estimated payment error rate through rereviewing the State agency's active case sample and ensuring that its sampling, estimation, and data management procedures are correct.

(i) FNS shall adjust State agencies' estimated error rates based on findings of rereviewed cases. Once the Federal case reviews have been completed and all differences with the State agency have been resolved, the State agency's estimated error rate shall be adjusted using the following linear regression equation.

(A) $y' = y + b(X - x)$ where y' is the average value of allotments overissued to eligible and ineligible households; y is the average value of allotments overissued to eligible and ineligible households in the rereview sample according to the Federal finding; b is the estimate of the slope parameter; x is the average value of allotments overissued to eligible and ineligible households in the rereview sample according to State agency findings; and X is the average value of allotments overissued to eligible and ineligible households in the

full quality control sampling according to the State agency's findings.

(B) The adjusted error rates are given by $r=y'/u$, where u is the average value of allotments issued to participating households.

(C) After application of the provisions of paragraph (e)(6)(iii) of this section, the adjusted payment error rate will then become the State agency's official payment error rate for use in the reduced and enhanced funding determinations described in paragraphs (d) and (e) of this section.

(ii) If FNS determines that a State agency has sampled incorrectly, estimated improperly, or has deficiencies in its QC data management system, FNS will correct the State agency's payment error rate based upon a correction to that aspect of the State agency's QC system which is deficient. If FNS cannot accurately correct the State agency's deficiency, FNS will assign the State agency a payment error rate based upon the best information available. After consultation with the State agency, this assigned payment error rate will then be used in the above described liability determination and in determinations for enhanced funding under paragraph (d) of this section. State agencies shall have the right to appeal assignment of an error rate in this situation in accordance with the procedure of § 276.7.

(iii) Should a State agency fail to complete all of its required sample size, FNS shall adjust the State agency's payment error rate by assigning two standard deviations of the estimated error rate to those cases not completed in order to calculate the State agency's official payment error.

PART 277—PAYMENT OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

15. In Section 277.4 paragraphs (b)(2), (b)(5), (b)(6), and (b)(7), and (b)(8) are adopted as final, they read as follows:

§ 277.4 Funding.

* * * * *

(b) Federal Reimbursement Rate.* * *

(2) For the period beginning October 1, 1982, a State agency's Federally funded share of Food Stamp Program administrative costs shall be increased to 60 percent when the sum of the State agency's payment and underissuance error rates is less than five percent; provided that the State agency's negative case error rate is less than the national weighted mean negative case error rate for the fiscal year prior to the period of enhanced funding. The State agency's error rates shall be determined through the quality control review process as described in section 275.

* * * * *

(5) For the period beginning October 1, 1980, a State agency's Federally funded share of Food Stamp Program administrative costs shall be increased to 65 percent when the State agency's cumulative allotment error rate is less than five percent; provided that the State agency's negative case error rate is less than the national weighted mean negative case error rate for the 6-month period of enhanced funding. This provision shall not apply to any period after the April through September 1982 period.

(6) For the period beginning October 1, 1980, a State agency's Federally funded

share of Food Stamp Program administrative costs shall be increased to 60 percent when the State agency's cumulative allotment error rate is less than eight percent; provided that the State agency's negative case error rate is less than the national weighted mean negative case error rate for the 6-month period of enhanced funding. This provision shall not apply to any period after the April through September 1982 period.

(7) for the 6-month period beginning October 1, 1980, a State agency with a 25 percent or greater reduction in its cumulative allotment error rate from one 6-month period to the comparable period of the next fiscal year shall be entitled to a 55 percent Federally funded share of Food Stamp Program administrative costs; provided that, effective with the 6-month period beginning October 1, 1981, the State agency's negative case error rate is less than the national weighted mean negative case error rate for the period of enhanced funding. This provision shall not apply to any period after the April through September 1982 period.

(8) beginning October 1982, the Federally funded share of administrative costs, as identified in paragraph (b) of this section may be decreased based upon its payment error rate as described in Section 275.25. The rates of Federal funding for the activities identified in paragraphs (b)(1), (b)(3), and (b)(4) of this section shall not be reduced based upon the agency's payment error rate.

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Robert E. Leard,
Administrator.

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